

SECOND REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 895
93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Offered April 11, 2006.

Senate Substitute adopted, April 12, 2006.

Taken up for Perfection April 12, 2006. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

4180S.09P

AN ACT

To repeal sections 354.150, 354.180, 354.210, 354.350, 354.444, 354.495, 354.722, 374.046, 374.150, 374.160, 374.210, 374.215, 374.230, 374.261, 374.263, 374.265, 374.267, 374.280, 374.512, 374.755, 374.787, 374.789, 375.001, 375.007, 375.012, 375.020, 375.152, 375.236, 375.306, 375.310, 375.445, 375.720, 375.777, 375.780, 375.786, 375.787, 375.881, 375.940, 375.942, 375.946, 375.994, 375.1010, 375.1012, 375.1014, 375.1016, 375.1135, 375.1156, 375.1160, 375.1204, 375.1306, 375.1309, 376.309, 376.889, 376.1094, 379.361, 379.510, 379.790, 380.391, 380.571, 384.071, 407.1200, 407.1203, 407.1206, 407.1209, 407.1212, 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227, RSMo, and to enact in lieu thereof eighty-seven new sections relating to various enforcement powers of the department of insurance, with penalty provisions and an effective date for certain sections.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 354.150, 354.180, 354.210, 354.350, 354.444, 354.495,
2 354.722, 374.046, 374.150, 374.160, 374.210, 374.215, 374.230, 374.261, 374.263,
3 374.265, 374.267, 374.280, 374.512, 374.755, 374.787, 374.789, 375.001, 375.007,
4 375.012, 375.020, 375.152, 375.236, 375.306, 375.310, 375.445, 375.720, 375.777,
5 375.780, 375.786, 375.787, 375.881, 375.940, 375.942, 375.946, 375.994, 375.1010,
6 375.1012, 375.1014, 375.1016, 375.1135, 375.1156, 375.1160, 375.1204, 375.1306,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

7 375.1309, 376.309, 376.889, 376.1094, 379.361, 379.510, 379.790, 380.391,
8 380.571, 384.071, 407.1200, 407.1203, 407.1206, 407.1209, 407.1212, 407.1215,
9 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227, RSMo, are repealed and
10 eighty-seven new sections enacted in lieu thereof, to be known as sections
11 354.150, 354.180, 354.210, 354.350, 354.444, 354.495, 354.722, 374.046, 374.047,
12 374.048, 374.049, 374.051, 374.055, 374.150, 374.160, 374.185, 374.210, 374.215,
13 374.230, 374.280, 374.512, 374.755, 374.780, 374.787, 374.789, 375.001, 375.007,
14 375.012, 375.020, 375.143, 375.145, 375.152, 375.236, 375.306, 375.310, 375.445,
15 375.720, 375.777, 375.780, 375.786, 375.881, 375.940, 375.942, 375.946, 375.994,
16 375.1010, 375.1014, 375.1016, 375.1135, 375.1156, 375.1160, 375.1161, 375.1204,
17 375.1306, 375.1309, 376.309, 376.435, 376.889, 376.1094, 379.361, 379.510,
18 379.790, 380.391, 380.571, 384.071, 385.200, 385.201, 385.203, 385.204, 385.205,
19 385.207, 385.208, 385.209, 385.210, 385.211, 385.212, 385.300, 385.301, 385.302,
20 385.303, 385.304, 385.305, 385.306, 385.307, 385.310, 385.311, and 385.312, to
21 read as follows:

354.150. Every health services corporation subject to the provisions of
2 sections 354.010 to 354.380 shall pay the following fees to the director of
3 insurance for enforcement of the provisions of this chapter:

4	[Issuance of certificate of authority	\$150.00
5	Filing articles of amendment	\$ 20.00
6	Filing each annual statement	\$100.00
7	Filing articles of acceptance and issuing a	
8	certificate of acceptance	\$ 20.00
9	Filing any other statement or report	\$ 1.00
10	For a certified copy of any document or	
11	other paper filed in the office of the director,	
12	per page	\$.35
13	For the certificate and for affixing the seal	
14	thereto	\$ 10.00
15	For filing statement and pertinent admission	
16	papers required of a foreign health	
17	services corporation	\$200.00
18	For copies of papers, records and documents filed	
19	in the office of the director, an amount not	
20	to exceed, at the director's discretion	\$ 1.00
21		per page

- 22 For each service of process upon the director, on
 23 behalf of the health services corporation\$ 10.00]
- 24 **(1) For filing the declaration required on organization of each**
 25 **domestic company, two hundred fifty dollars;**
- 26 **(2) For filing statement and certified copy of charter required of**
 27 **foreign companies, two hundred fifty dollars;**
- 28 **(3) For filing application to renew certificate of authority, along**
 29 **with all required annual reports, including the annual statement,**
 30 **actuarial statement, risk based capital report, report of valuation of**
 31 **policies or other obligations of assurance, and audited financial report**
 32 **of any company doing business in this state, one thousand five hundred**
 33 **dollars;**
- 34 **(4) For filing any paper, document, or report not filed under**
 35 **subdivisions (1), (2), or (3) of this section but required to be filed in the**
 36 **office of the director of the department of insurance, fifty dollars each;**
- 37 **(5) For affixing the seal of office of the director of the**
 38 **department of insurance, ten dollars;**
- 39 **(6) For accepting each service of process upon the company, ten**
 40 **dollars.**

354.180. 1. [(1) The director may issue cease and desist orders whenever
 2 it appears to him upon competent and substantial evidence that any person is
 3 acting in violation of any law, rule or regulation relating to corporations subject
 4 to the provisions of sections 354.010 to 354.380, or whenever the director has
 5 reason to believe that any health services corporation is in such financial
 6 condition that the assumption of additional obligations would be hazardous to its
 7 members or the general public. Before any cease and desist order shall be issued,
 8 a copy of the proposed order together with an order to show cause why such cease
 9 and desist order should not be issued shall be served either personally or by
 10 certified mail on any person named therein.

11 (2) (a) Upon issuing any order to show cause, the director shall notify the
 12 person named therein that the person is entitled to a public hearing before the
 13 director if a request for a hearing is made in writing to the director within fifteen
 14 days from the day of the service of the order to show cause why the cease and
 15 desist order should not be issued.

16 (b) The cease and desist order shall be issued fifteen days after the service
 17 of the order to show cause if no request for a public hearing is made as above

18 provided.

19 (c) Upon receipt of a request for a hearing, the director shall set a time
20 and place for the hearing which shall not be less than ten days or more than
21 fifteen days from the receipt of the request or as otherwise agreed upon by the
22 parties. Notice of the time and place shall be given by the director not less than
23 five days before the hearing.

24 (d) At the hearing the person may be represented by counsel and shall be
25 entitled to be advised of the nature and source of any adverse evidence procured
26 by the director and shall be given the opportunity to submit any relevant written
27 or oral evidence in his behalf to show cause why the cease and desist order should
28 not be issued.

29 (e) At the hearing the director shall have such powers as are conferred
30 upon him in section 354.190.

31 (f) At the conclusion of the hearing, or within ten days thereafter, the
32 director shall issue the cease and desist order as proposed or as subsequently
33 modified or notify the person or corporation subject to the provisions of sections
34 354.010 to 354.380 that no order shall be issued, provided that where the director
35 finds that the corporation is in such financial condition that the assumption of
36 additional obligations would be hazardous to its members or the general public,
37 he may order the corporation to cease and desist from making contracts for new
38 members or for the provision of new benefits until the corporation's financial
39 condition is no longer hazardous.

40 (g) The circuit court of Cole County shall have jurisdiction to review any
41 cease and desist order of the director under the provisions of sections 536.100 to
42 536.150, RSMo; and, if any person against whom an order is issued fails to
43 request judicial review, or if, after judicial review, the director's cease and desist
44 order is upheld, the order shall become final.

45 2. (1) Any person willfully violating any provision of any cease and desist
46 order of the director after it becomes final, while the same is in force, upon
47 conviction thereof shall be guilty of a class A misdemeanor, punishable as
48 provided by law.

49 (2) In addition to any other penalty provided, violation of any cease and
50 desist order shall subject the violator to suspension or revocation of any
51 certificate of authority or license as may be applicable under the laws of this state
52 relating to corporations subject to the provisions of sections 354.010 to 354.380.

53 3. (1) When it appears to the director that there is a violation of the law,

54 rule or regulation relating to corporations subject to the provisions of sections
55 354.010 to 354.380, and that the continuance of the acts or actions of any person
56 as herein defined would produce injury to the public or to any other person in this
57 state, or when it appears that a person is doing or threatening to do some act in
58 violation of the laws of this state relating to corporations subject to the provisions
59 of sections 354.010 to 354.380, the director may file a petition for injunction in
60 the circuit court of Cole County, Missouri, in which he may ask for a temporary
61 injunction or restraining order as well as a permanent injunction to restrain the
62 act or threatened act. In the event the temporary injunction or restraining order
63 or a permanent injunction is issued by the circuit court of Cole County, Missouri,
64 no person against whom the temporary injunction or restraining order or
65 permanent injunction is granted shall do or continue to do any of the acts or
66 actions complained of in the petition for injunction, unless and until the
67 temporary injunction or restraining order or permanent injunction is vacated,
68 dismissed or otherwise terminated.

69 (2) Any writ of injunction issued under this law may be served and
70 enforced as provided by law in injunctions issued in other cases, but the director
71 of the insurance department shall not be required to give any bond as preliminary
72 to or in the course of any proceedings to which he is a party as director.

73 4. The term "person" as used in this section shall include any individual,
74 partnership, corporation, association or trust, or any other legal entity.] **If the**
75 **director determines that a person has engaged, is engaging, or is about**
76 **to engage in a violation of sections 354.010 to 354.380 or a rule adopted**
77 **or order issued pursuant thereto, or a person has materially aided, is**
78 **materially aiding, or is about to materially aid an act, practice,**
79 **omission, or course of business constituting a violation of sections**
80 **354.010 to 354.380 or a rule adopted or order issued pursuant thereto,**
81 **the director may issue such administrative orders as authorized under**
82 **section 374.046, RSMo. A violation of these sections is a level two**
83 **violation under section 374.049, RSMo, except for any violation of**
84 **sections 354.320 and 354.350, which is a level three violation.**

85 2. **If the director believes that a person has engaged, is engaging,**
86 **or is about to engage in a violation of sections 354.010 to 354.380 or a**
87 **rule adopted or order issued pursuant thereto, or that a person has**
88 **materially aided, is materially aiding, or is about to materially aid an**
89 **act, practice, omission, or course of business constituting a violation of**

90 sections 354.010 to 354.380 or a rule adopted or order issued pursuant
91 thereto, the director may maintain a civil action for relief authorized
92 under section 374.048, RSMo. A violation of these sections is a level two
93 violation under section 374.049, RSMo, except for any violation of
94 sections 354.320 and 354.350, which is a level three violation.

354.210. [1. Notwithstanding any other provisions of chapter 354,] If the
2 director [may, after a hearing, order as a forfeiture to the state of Missouri a sum
3 not to exceed one hundred dollars for each violation by any person or corporation
4 willfully violating any provision of sections 354.010 to 354.380 for which no
5 specific punishment is provided, or order of the director made in accordance with
6 such sections. Such forfeiture may be recovered by a civil action brought by and
7 in the name of the director of insurance. The civil action may be brought in the
8 county which has venue of an action against the person or corporation under
9 other provisions of law.

10 2. Nothing contained in this section shall be construed to prohibit the
11 director and the corporation or its enrollment representative from agreeing to a
12 voluntary forfeiture of the sum mentioned herein without civil proceedings being
13 instituted. Any sum so agreed upon shall be paid into the school fund as
14 provided by law for other fines and penalties] **has reason to believe that any**
15 **health services corporation is in such financial condition that the**
16 **assumption of additional obligations would be hazardous to its**
17 **members or the general public, the director may issue orders to seek**
18 **relief to protect the public under the provisions of section 354.180.**

354.350. 1. [When upon investigation the director finds that any] **It is**
2 **unlawful for any** corporation subject to the provisions of sections 354.010 to
3 354.380 transacting business in this state [has conducted] **to:**

4 (1) **Conduct** its business fraudulently[, is not carrying];

5 (2) **Fail to carry** out its contracts in good faith[, or is]; **or**

6 (3) Habitually and as a matter of business practice [compelling] **compel**
7 claimants under policies or liability judgment creditors of its members to either
8 accept less than the amount due under the terms of the policy or resort to
9 litigation against the corporation to secure payment of the amount due[, and that
10 a proceeding in respect thereto would be in the interest of the public, he shall
11 issue and serve upon the corporation a statement of the charges in that respect
12 and a notice of a hearing thereon].

13 2. [If after the hearing the director shall determine that the corporation

14 subject to the provisions of sections 354.010 to 354.380 has fraudulently
15 conducted its business as defined in this section, he shall order the corporation
16 to cease and desist from the fraudulent practice and may suspend the
17 corporation's certificate of authority for a period not to exceed thirty days and
18 may in addition order a forfeiture to the state of Missouri of a sum not to exceed
19 one thousand dollars, which forfeiture may be recovered by a civil action brought
20 by and in the name of the director of insurance. The civil action may be brought
21 in the circuit court of Cole County or, at the option of the director of insurance,
22 in another county which has venue of an action against the corporation under
23 other provisions of law] **If the director determines that a person has**
24 **engaged, is engaging, or is about to engage in a violation of this section**
25 **or a rule adopted or order issued pursuant thereto or that a person has**
26 **materially aided, is materially aiding, or is about to materially aid an**
27 **act, practice, omission, or course of business constituting a violation of**
28 **this section or a rule adopted or order issued pursuant thereto, the**
29 **director may issue such administrative orders as authorized under**
30 **section 374.046, RSMo. A violation of this section is a level three**
31 **violation under section 374.049, RSMo.** The director of insurance may also
32 suspend or revoke the license **or certificate of authority** of a corporation
33 subject to the provisions of sections 354.010 to 354.380 or enrollment
34 representative for any such willful violation.

35 **3. If the director believes that a person has engaged, is engaging,**
36 **or is about to engage in a violation of this section or a rule adopted or**
37 **order issued pursuant thereto or that a person has materially aided, is**
38 **materially aiding, or is about to materially aid an act, practice,**
39 **omission, or course of business constituting a violation of this section**
40 **or a rule adopted or order issued pursuant thereto, the director may**
41 **maintain a civil action for relief authorized under section 374.048,**
42 **RSMo. A violation of this section is a level three violation under**
43 **section 374.049, RSMo.**

354.444. 1. [Notwithstanding any other provisions of chapter 354,] If the
2 director [may, after a hearing, order a forfeiture to the state of Missouri a sum
3 not to exceed one hundred dollars for each violation by any person knowingly
4 violating any provision] **determines that a person has engaged, is**
5 **engaging, or is about to engage in a violation** of sections 354.400 to 354.636
6 [for which no specific punishment is provided, or order a specific punishment in

7 accordance with such sections. Such forfeiture may be recovered by a civil action
 8 brought by and in the name of the department of insurance. The civil action may
 9 be brought in the county which has venue for an action against the person or
 10 corporation], or a rule adopted or order issued pursuant thereto or that
 11 a person has materially aided, is materially aiding, or is about to
 12 materially aid an act, practice, omission, or course of business
 13 constituting a violation of sections 354.400 to 354.636 or a rule adopted
 14 or order issued pursuant thereto, the director may issue such
 15 administrative orders as authorized under section 374.046, RSMo. A
 16 violation of any of these sections is a level one violation under section
 17 374.049, RSMo.

18 2. [Nothing contained in this section shall be construed to prohibit the
 19 director and the corporation or its enrollment representative from agreeing to a
 20 voluntary forfeiture of the sum mentioned herein without civil proceedings being
 21 instituted. Any payment under this section shall be paid into the school fund as
 22 provided by article IX, section 7 of the Missouri Constitution for fines and
 23 penalties] If the director believes that a person has engaged, is engaging,
 24 or is about to engage in a violation of sections 354.400 to 354.636, or a
 25 rule adopted or order issued pursuant thereto or that a person has
 26 materially aided, is materially aiding, or is about to materially aid an
 27 act, practice, omission, or course of business constituting a violation of
 28 sections 354.400 to 354.636 or a rule adopted or order issued pursuant
 29 thereto, the director may maintain a civil action for relief authorized
 30 under section 374.048, RSMo. A violation of any of these sections is a
 31 level one violation under section 374.049, RSMo.

354.495. Every health maintenance organization subject to sections
 2 354.400 to 354.550 shall pay to the director the following fees:

- 3 [(1) Issuance or renewal of certificate of
 4 authority \$150.00
 5 (2) Filing of articles of amendment 1.00
 6 (3) Filing each annual statement 100.00
 7 (4) Filing articles of acceptance and issuing
 8 a certificate of acceptance 20.00
 9 (5) Filing any other statement or report 20.00
 10 (6) For the certification of any document, and
 11 affixing the seal thereto 10.00

- 12 (7) For filing statement and pertinent admission
- 13 papers required of a foreign health
- 14 maintenance organization 200.00
- 15 (8) For each appointment of an agent by the
- 16 health maintenance organization 5.00
- 17 (9) For copies of papers, records and documents
- 18 filed in the office of the director, an
- 19 amount not to exceed, at the director's
- 20 discretion 1.00
- 21 per page
- 22 (10) For each service of process upon the
- 23 director, on behalf of the health
- 24 maintenance organization 10.00]
- 25 **(1) For filing the declaration required on organization of each**
- 26 **domestic company, two hundred fifty dollars;**
- 27 **(2) For filing statement and certified copy of charter required of**
- 28 **foreign companies, two hundred fifty dollars;**
- 29 **(3) For filing application to renew certificate of authority, along**
- 30 **with all required annual reports, including the annual statement,**
- 31 **actuarial statement, risk based capital report, report of valuation of**
- 32 **policies or other obligations of assurance, and audited financial report**
- 33 **of any company doing business in this state, one thousand five hundred**
- 34 **dollars;**
- 35 **(4) For filing any paper, document, or report not filed under**
- 36 **subdivisions (1), (2), or (3) of this section but required to be filed in the**
- 37 **office of the director of the department of insurance, fifty dollars each;**
- 38 **(5) For affixing the seal of office of the director of the**
- 39 **department of insurance, ten dollars;**
- 40 **(6) For accepting each service of process upon the company, ten**
- 41 **dollars.**

354.722. 1. The director may suspend or revoke any certificate of
 2 authority issued to a prepaid dental plan corporation pursuant to sections
 3 354.700 to 354.723 if he finds that any of the following conditions exist:

- 4 (1) The prepaid dental plan corporation is operating substantially in
- 5 contravention of its basic organizational document or is not fulfilling its contracts;
- 6 (2) [The prepaid dental plan corporation issues a contract, contract

7 certificate or amendment which has not been filed with the director and approved
8 or deemed approved by the director;

9 (3)] The prepaid dental plan corporation is no longer financially
10 responsible and may reasonably be expected to be unable to meet its contractual
11 obligations to enrollees, or prospective enrollees;

12 [(4)] (3) The prepaid dental plan corporation, or any person on its behalf,
13 has advertised or merchandised its prepaid dental benefits in an untrue,
14 misrepresentative, misleading, deceptive, or unfair manner; or

15 [(5)] (4) The continued operation of the prepaid dental plan corporation
16 would be hazardous to its enrollees[; or

17 (6) The prepaid dental plan corporation has failed to substantially comply
18 with the provisions of sections 354.700 to 354.723 or any rules or regulations
19 promulgated thereunder].

20 2. [When the director believes that grounds for the suspension or
21 revocation of the corporation's certificate of authority exists, he shall notify the
22 corporation in writing, stating the grounds and fixing a date and time for a
23 hearing. At least twenty days' notice of such hearing shall be given. The hearing
24 and any appeals therefrom shall be in accordance with chapter 536, RSMo.

25 3. The director may, in lieu of the suspension or revocation of the
26 corporation's certification of authority, file suit in circuit court to seek a civil
27 penalty in an amount not less than one hundred dollars nor more than one
28 thousand dollars.

29 **4.] If the director determines that a person has engaged, is**
30 **engaging, or is about to engage in a violation of sections 354.700 to**
31 **354.723 or a rule adopted or order issued pursuant thereto or that a**
32 **person has materially aided, is materially aiding, or is about to**
33 **materially aid an act, practice, omission, or course of business**
34 **constituting a violation of sections 354.700 to 354.723 or a rule adopted**
35 **or order issued pursuant thereto, the director may issue such**
36 **administrative orders as authorized under section 374.046, RSMo. A**
37 **violation of this section is a level two violation under section 374.049,**
38 **RSMo. The director of insurance may also suspend or revoke the**
39 **certificate of authority of a corporation for any such willful violation.**

40 3. When the certificate of authority of a prepaid dental plan corporation
41 is suspended, the prepaid dental plan corporation shall not, during the period of
42 such suspension, enroll any additional enrollees except newborn children or other

43 newly acquired dependent of existing enrollees and shall not engage in any
44 advertising or solicitation whatsoever.

45 [5.] 4. When the certificate of authority of a prepaid dental plan
46 corporation is revoked, such corporation shall proceed, immediately following the
47 effective date of the order of revocation, to wind up its affairs and shall conduct
48 no further business except as may be essential to the orderly conclusion of the
49 affairs of such corporation. It shall engage in no further advertising or
50 solicitation whatsoever.

374.046. 1. [(1) The director may issue cease and desist orders whenever
2 it appears to him upon competent and substantial evidence that any person is
3 acting in violation of any law of this state or any rule or regulation promulgated
4 by the director relating to the business of insurance. Before any cease and desist
5 order shall be issued, a copy of the proposed order together with an order to show
6 cause why such cease and desist order should not be issued shall be served either
7 personally or by certified mail on any person named therein.

8 (2) (a) Upon issuing any order to show cause the director shall notify the
9 person named therein that the person is entitled to a public hearing before the
10 director if a request for a hearing is made in writing to the director within fifteen
11 days from the day of the service of the order to show cause why the cease and
12 desist order should not be issued.

13 (b) The cease and desist order shall be issued fifteen days after the service
14 of the order to show cause if no request for a public hearing is made as above
15 provided.

16 (c) Upon receipt of a request for a hearing the director shall set a time
17 and place for the hearing which shall not be less than ten days or more than
18 fifteen days from the receipt of the request or as otherwise agreed upon by the
19 parties. Notice of the time and place shall be given by the director not less than
20 five days before the hearing.

21 (d) At the hearing the person may be represented by counsel and shall be
22 entitled to be advised of the nature and source of any adverse evidence procured
23 by the director and shall be given the opportunity to submit any relevant written
24 or oral evidence in his behalf to show cause why the cease and desist order should
25 not be issued.

26 (e) At the hearing the director shall have such powers as are conferred
27 upon him in section 374.190.

28 (f) At the conclusion of the hearing, or within ten days thereafter, the

29 director shall issue the cease and desist order as proposed or as subsequently
30 modified or notify the person that no order shall be issued.

31 (g) The circuit court of Cole County shall have jurisdiction to review any
32 cease and desist order of the director under the provisions of sections 536.100 to
33 536.150, RSMo; and, if any person against whom an order is issued fails to
34 request judicial review, or if, after judicial review, the director's cease and desist
35 order is upheld, the order shall become final.

36 **2.] If the director determines based upon substantial and**
37 **competent evidence that a person has engaged, is engaging, or is about**
38 **to engage in an act, practice, omission, or course of business**
39 **constituting a violation of the laws of this state relating to insurance**
40 **in this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, or**
41 **a rule adopted or order issued pursuant thereto or that a person has**
42 **materially aided, is materially aiding, or is about to materially aid an**
43 **act, practice, omission, or course of business constituting a violation of**
44 **the laws of this state relating to insurance in this chapter, chapter 354,**
45 **RSMo, and chapters 375 to 385, RSMo, or a rule adopted or order issued**
46 **pursuant thereto, the director may order the following relief:**

47 (1) An order directing the person to cease and desist from
48 engaging in the act, practice, omission, or course of business;

49 (2) A curative order or order directing the person to take other
50 action necessary or appropriate to comply with the insurance laws of
51 this state;

52 (3) Order a civil penalty or forfeiture as provided in section
53 374.049; and

54 (4) Award reasonable costs of the investigation.

55 2. In determining any relief sought, the director shall consider,
56 among other factors, whether:

57 (1) The violations are likely to continue or reoccur;

58 (2) Actual financial loss was sustained by consumers and
59 restitution has been made;

60 (3) The act, practice, omission, or course of business was
61 detected as part of a self-audit or internal compliance program and
62 immediately reported to the director; and

63 (4) The act, practice, omission, or course of business had
64 previously been detected, but inadequate policies and procedures were
65 implemented to prevent reoccurrence.

66 3. Unless the director determines that a summary order is
67 appropriate under subsection 4 of this section, the director shall
68 provide notice of the intent to initiate administrative enforcement by
69 serving a statement of the reasons for the action upon any person
70 subject to the proceedings. A statement of reasons, together with an
71 order to show cause why a cease and desist order and other relief
72 should not be issued, shall be served either personally or by certified
73 mail on any person named therein. The director shall schedule a time
74 and place at least ten days thereafter, for hearing, and after notice of
75 and opportunity for hearing to each person subject to the order, the
76 director may issue a final order under subsection 6 of this section.

77 4. If the director determines that sections 375.014, 375.144, or
78 375.310, RSMo, are being violated and consumers are being aggrieved
79 by the violations, the order issued under subdivision (1) of subsection
80 1 of this section may be summary and be effective on the date of
81 issuance. Upon issuance of the order, the director shall promptly serve
82 each person subject to the order with a copy of the order and a notice
83 that the order has been entered.

84 5. A summary order issued under subsection 4 of this section
85 must include a statement of the reasons for the order, notice within
86 five days after receipt of a request in a record from the person that the
87 matter will be scheduled for a hearing, and a statement whether the
88 department is seeking a civil penalty or costs of the investigation. If
89 a person subject to the order does not request a hearing and none is
90 ordered by the director within thirty days after the date of service of
91 the order, the order becomes final as to that person by operation of
92 law. If a hearing is requested or ordered, the director, after notice of
93 and opportunity for hearing to each person subject to the order, may
94 modify or vacate the order or extend it until final determination.

95 6. If a hearing is requested or ordered pursuant to subsection 3
96 or subsection 5 of this section, a hearing before the director or a
97 hearing officer designated by the director must be provided. A final
98 order may not be issued unless the director makes findings of fact and
99 conclusions of law in a record in accordance with the provisions of
100 chapter 536, RSMo, and procedural rules promulgated by the
101 director. The final order may make final, vacate, or modify the order
102 issued under subsection 5 of this section.

103 7. In a final order under subsection 6 of this section, the director
104 may impose a civil penalty or forfeiture as provided in section 374.049.
105 No civil penalty or forfeiture may be imposed against a person unless
106 the person has engaged in the act, practice, omission, or course of
107 business constituting the violation.

108 8. In a final order under subsection 6 of this section, the director
109 may charge the actual cost of an investigation or proceeding for a
110 violation of the insurance laws of this state or a rule adopted or order
111 issued pursuant thereto. These funds shall be paid to the director to
112 the credit of the insurance dedicated fund.

113 9. The director is authorized to issue subpoenas, compel
114 attendance of witnesses, administer oaths, hear testimony of witnesses,
115 receive evidence, and require the production of books, papers, records,
116 correspondence, and all other written instruments or documents
117 relevant to the proceeding and authorized in contested cases under the
118 provisions of chapter 536, RSMo, and procedural rules promulgated by
119 the director.

120 10. Statements of charges, notices, orders, and other processes
121 of the director may be served by anyone duly authorized by the
122 director either in the manner provided by law for service of process in
123 civil actions, or by registering or certifying and mailing a copy thereof
124 to the person affected by such statement, notice, order, or other process
125 at his or its residence or principal office or place of business. The
126 verified return by the person so serving such statement, notice, order,
127 or other process setting forth the manner of such service shall be proof
128 of the same, and the return postcard receipt for such statement, notice,
129 order, or other process, registered and mailed as aforesaid, shall be
130 proof of the service of the same.

131 11. If a petition for judicial review of a final order is not filed in
132 accordance with section 374.055, the director may file a certified copy
133 of the final order with the clerk of a court of competent
134 jurisdiction. The order so filed has the same effect as a judgment of the
135 court and may be recorded, enforced, or satisfied in the same manner
136 as a judgment of the court.

137 12. If a person violates or does not comply with an order under
138 this section, the director may under section 374.048 petition a court of
139 competent jurisdiction to enforce the order. The court may not require

140 the director to post a bond in an action or proceeding under this
141 section. If the court finds, after service and opportunity for hearing,
142 that the person was not in compliance with the order, the court may,
143 in addition to relief authorized in section 374.048, adjudge the person
144 in civil contempt of the order. A violation of or failure to comply with
145 an order under this section is a level three violation under section
146 374.049. The court may impose a further civil penalty against the
147 person for contempt in an amount not less than five thousand dollars
148 but not greater than one hundred thousand dollars for each violation
149 and may grant any other relief the court determines is just and proper
150 in the circumstances.

151 13. Until the expiration of the time allowed under section 374.055
152 for filing a petition for judicial review, if no such petition has been
153 duly filed within such time or if a petition for review has been filed
154 within such time, then until the transcript of the record in the
155 proceeding has been filed in the circuit court of Cole County, the
156 director may at any time, upon such notice and in such manner as he
157 shall deem proper, modify or set aside in whole or in part any order
158 issued by him under this section.

159 14. The enforcement authority of the director under this section
160 is cumulative to any other statutory authority of the director.

161 15. The director is authorized to issue administrative consent
162 orders in the public interest as complete or partial settlement of any
163 investigation, examination, or other proceeding, which curative orders
164 may contain any provision necessary or appropriate to assure
165 compliance with the insurance laws of this state, require payment of
166 restitution to be distributed directly or by the director to any
167 aggrieved consumers, civil penalties, or voluntary forfeiture,
168 reimbursement for costs of investigation or examination, or any other
169 relief deemed by the director to be necessary and appropriate. Any
170 remaining matters not addressed in settlement may be submitted to the
171 director through a contested proceeding under this section.

172 16. (1) Any person willfully violating any provision of any cease and
173 desist order of the director after it becomes final, while the same is in force, upon
174 conviction thereof shall be punished by a fine of not more than one hundred
175 thousand dollars [or one year in jail], by imprisonment of up to ten years,
176 or by both such fine and [jail sentence] imprisonment.

177 (2) In addition to any other penalty provided, violation of any cease and
178 desist order shall subject the violator to suspension or revocation of any
179 certificate of authority or license as may be applicable under the laws of this state
180 relating to the business of insurance.

181 [3. (1) When it appears to the director that there is a violation of the laws
182 of this state or any rule or regulation promulgated by the director relating to the
183 business of insurance, and that the continuance of the acts or actions of any
184 person as herein defined would produce injury to the insuring public or to any
185 other person in this state, or when it appears that a person is doing or
186 threatening to do some act in violation of the laws of this state relating to
187 insurance, the director may file a petition for injunction in the circuit court of
188 Cole County, Missouri, in which he may ask for a temporary injunction or
189 restraining order as well as a permanent injunction to restrain the act or
190 threatened act. In the event the temporary injunction or restraining order or a
191 permanent injunction is issued by the circuit court of Cole County, Missouri, no
192 person against whom the temporary injunction or restraining order or permanent
193 injunction is granted shall do or continue to do any of the acts or actions
194 complained of in the petition for injunction, unless and until the temporary
195 injunction or restraining order or permanent injunction is vacated, dismissed or
196 otherwise terminated.

197 (2) Any writ of injunction issued under this law may be served and
198 enforced as provided by law in injunctions issued in other cases, but the director
199 of the insurance department shall not be required to give any bond as preliminary
200 to or in the course of any proceedings to which he is a party as director under this
201 section, either for costs or for any injunction, or in case of appeal to either the
202 supreme court or to any appellate court.

203 4.] **17.** The term "person" as used in this [section] **chapter** shall include
204 any individual, partnership, corporation, association or trust, or any other legal
205 entity.

206 **18. The term "order" as used in this chapter shall include a**
207 **formal administrative direction or command of the director issued**
208 **under this section or in any contested case subject to the provisions of**
209 **section 536.063, RSMo, or any lawful administrative proceeding subject**
210 **to judicial review, but shall not include department bulletins, no-action**
211 **letters, advisory opinions, or any other statement of general**
212 **applicability that should be adopted by rule.**

374.047. 1. If the director determines, based on substantial and
2 competent evidence, that a corporation or insurer with a certificate of
3 authority under the laws relating to insurance willfully has engaged in
4 an act, practice, omission, or course of business constituting a level
5 three, four, or five violation of the laws of this state relating to
6 insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo,
7 or been convicted of any felony or misdemeanor under any state or
8 federal law, the director may, after hearing, issue an order suspending
9 or revoking the certificate of authority.

10 2. Prior to issuance of the order under this section, the director
11 shall give at least thirty days' notice with a statement of reasons for the
12 action and afford such corporation or insurer the opportunity for a
13 hearing upon written request. If such corporation or insurer requests
14 a hearing in writing, a final order of suspension or revocation may not
15 be issued unless the director makes findings of fact and conclusions of
16 law in a record in accordance with the contested case provisions of
17 chapter 536, RSMo, and procedural rules promulgated by the director.

18 3. The enforcement authority of the director under this section
19 is cumulative to any other statutory authority of the director.

374.048. 1. If the director believes that a person has engaged, is
2 engaging, or is about to engage in an act, practice, omission, or course
3 of business constituting a violation of the laws of this state relating to
4 insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo,
5 or a rule adopted or order issued pursuant thereto or that a person has,
6 is, or is about to engage in an act, practice, omission, or course of
7 business that materially aids a violation of the laws of this state
8 relating to insurance in this chapter, chapter 354 and chapters 375 to
9 385, RSMo, or a rule adopted or order issued pursuant thereto, the
10 director may maintain an action in the circuit court of any county of
11 the state or any city not within a county to enjoin the act, practice,
12 omission, or course of business and to enforce compliance with the laws
13 of this state relating to insurance or a rule adopted or order issued by
14 the director.

15 2. In an action under this section and on a proper showing, the
16 court may:

17 (1) Issue a permanent or temporary injunction, restraining
18 order, or declaratory judgment;

19 **(2) Order other appropriate or ancillary relief, which may**
20 **include:**

21 **(a) An asset freeze, accounting, writ of attachment, writ of**
22 **general or specific execution, and appointment of a receiver or**
23 **conservator, which may be the director, for the defendant or the**
24 **defendant's assets;**

25 **(b) Ordering the director to take charge and control of a**
26 **defendant's property, including accounts in a depository institution,**
27 **rents, and profits; to collect debts; and to acquire and dispose of**
28 **property;**

29 **(c) Imposing a civil penalty or forfeiture as provided in section**
30 **374.049;**

31 **(d) Upon showing financial loss, injury, or harm to identifiable**
32 **consumers, imposing an order of restitution or disgorgement directed**
33 **to a person who has engaged in an act, practice, omission, or course of**
34 **business in violation of the laws or rules relating to insurance;**

35 **(e) Ordering the payment of prejudgment and post-judgment**
36 **interest;**

37 **(f) Ordering reasonable costs of investigation and prosecution;**
38 **and**

39 **(g) Ordering the payment to the insurance dedicated fund an**
40 **additional amount equal to ten percent of the total restitution or**
41 **disgorgement ordered, or such other amount as awarded by the court,**
42 **which shall be appropriated to an insurance consumer education**
43 **program administered by the director; or**

44 **(3) Order such other relief as the court considers necessary or**
45 **appropriate.**

46 **3. The director may not be required to post a bond in an action**
47 **or proceeding under this section.**

48 **4. The case may be brought in the circuit court of Cole County,**
49 **any county or city not within a county in which a violation has**
50 **occurred, or any county or city not within a county, which has venue**
51 **of an action against the person, partnership, or corporation under**
52 **other provisions of law.**

53 **5. The enforcement authority of the director under this section**
54 **is cumulative to any other authority of the director to impose orders**
55 **under other provisions of the insurance laws of this state.**

56 **6. If the director determines it to be in the public interest, the**
57 **director is authorized to enter into a consent injunction and judgment**
58 **in the settlement of any proceeding under the laws of this state relating**
59 **to insurance in this chapter, chapter 354 and chapters 375 to 385,**
60 **RSMo.**

61 **7. A "Consumer Restitution Fund" shall be created for the**
62 **purpose of preserving and distributing to aggrieved consumers**
63 **disgorgement or restitution funds obtained through enforcement**
64 **proceedings brought by the director. In addition to the equitable**
65 **powers of the court authorized above, the court may order that such**
66 **funds be paid into the consumer restitution fund for distribution to**
67 **aggrieved consumers. It shall be the duty of the director to distribute**
68 **such funds to those persons injured by the unlawful acts, practices,**
69 **omissions, or courses of business by the subject of the**
70 **proceeding. Notwithstanding the provisions of section 33.080, RSMo,**
71 **any funds remaining in the director's consumer restitution fund at the**
72 **end of any biennium shall not be transferred to the general revenue**
73 **fund, but if the director is unable with reasonable efforts to ascertain**
74 **the aggrieved consumers, then the funds may be transferred to the**
75 **insurance dedicated fund to be used for consumer education.**

374.049. 1. Violations of the laws of this state relating to
2 **insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo,**
3 **or a rule adopted or order issued by the director, are classified for the**
4 **purpose of civil penalties and forfeitures into the following five**
5 **classifications:**

- 6 **(1) Level one violations;**
- 7 **(2) Level two violations;**
- 8 **(3) Level three violations;**
- 9 **(4) Level four violations; and**
- 10 **(5) Level five violations.**

11 **2. An order to impose a civil penalty or forfeiture, when imposed**
12 **by the director in an administrative proceeding under section 374.046**
13 **on a person for any violation of the laws of this state relating to**
14 **insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo,**
15 **or a rule adopted or order issued by the director, shall be an order to**
16 **pay an amount not exceeding the following:**

- 17 **(1) No civil penalty or forfeiture for a level one violation;**

18 **(2) One thousand dollars per each level two violation, up to an**
19 **aggregate civil penalty or forfeiture of fifty thousand dollars per**
20 **annum for multiple violations;**

21 **(3) Five thousand dollars per each level three violation, up to an**
22 **aggregate civil penalty or forfeiture of one hundred thousand dollars**
23 **per annum for multiple violations;**

24 **(4) Ten thousand dollars per each level four violation, up to an**
25 **aggregate civil penalty or forfeiture of two hundred fifty thousand**
26 **dollars per annum for multiple violations;**

27 **(5) Fifty thousand dollars per each level five violation, up to an**
28 **aggregate civil penalty or forfeiture of two hundred fifty thousand**
29 **dollars per annum for multiple violations.**

30 **3. An order to impose a civil penalty or forfeiture, when imposed**
31 **by the court in an enforcement proceeding under section 374.048 on a**
32 **person for any violation of the laws of this state relating to insurance**
33 **in this chapter, chapter 354 and chapters 375 to 385, RSMo, or a rule**
34 **adopted or order issued by the director, shall be an order to pay an**
35 **amount not exceeding the following:**

36 **(1) No civil penalty or forfeiture for a level one violation;**

37 **(2) One thousand dollars per each level two violation, up to an**
38 **aggregate civil penalty or forfeiture of fifty thousand dollars per**
39 **annum for multiple violations;**

40 **(3) Five thousand dollars per each level three violation, up to an**
41 **aggregate civil penalty or forfeiture of two hundred thousand dollars**
42 **per annum for multiple violations;**

43 **(4) Twenty thousand dollars per each level four violation, up to**
44 **an aggregate civil penalty or forfeiture of one million dollars per**
45 **annum for multiple violations;**

46 **(5) One million dollars per each level five violation, with no limit**
47 **to civil penalties or forfeitures for multiple violations;**

48 **4. No civil penalty or forfeiture may be imposed against a person,**
49 **unless the person has engaged in the act, practice, omission or course**
50 **of business constituting the violation.**

51 **5. Any violation of the laws of this state relating to insurance in**
52 **this chapter, chapter 354 and chapters 375 to 385, RSMo, which is not**
53 **classified or does not authorize a specific range for a civil penalty or**
54 **forfeiture for violations, shall be classified as a level one violation. In**

55 bringing an action to enforce a rule adopted by the director, unless the
56 conduct that violates the rule also violates the enabling statute, the
57 violation shall be classified as a level one violation and shall not be
58 subject to any provision in this section regarding the enhancement of
59 a civil penalty or forfeiture.

60 6. The civil penalties or forfeitures set forth in this section
61 establish a maximum range. The court, or the director in
62 administrative enforcement, shall consider all of the circumstances,
63 including the nature of violations to determine whether, and to any
64 extent, a civil penalty or forfeiture is justified.

65 7. In any enforcement proceeding, the court, or director in
66 administrative enforcement, may enhance the civil penalty or forfeiture
67 with a one classification step increase under this section, if the
68 violation was knowing. The court, or director in administrative
69 enforcement, may enhance the civil penalty or forfeiture with a two
70 level increase if the violation was knowingly committed in conscious
71 disregard of the law.

72 8. In any enforcement proceeding, the court, or director in
73 administrative enforcement, may, after consideration of the factors
74 specified in subsection 2 of section 374.046, enhance the civil penalty
75 or forfeiture with a one classification step increase under this section,
76 if the violations resulted in actual financial loss to consumers.

77 9. In any enforcement proceeding, the court, or director in
78 administrative enforcement, shall reduce the civil penalty or forfeiture
79 on that person with up to a two classification step reduction under this
80 section, if prior to receiving notice of the violation from the
81 department, the person detects the violation through a self-audit or
82 internal compliance program reasonably designed to detect and
83 prevent insurance law violations and immediately reports the violation
84 to the director.

85 10. If more than one error is caused by a single act or omission
86 in the use of data processing equipment and such errors are not known
87 by the violator at the time the error occurs, then any such errors shall
88 be regarded as a single violation under this section.

89 11. Any civil penalty or forfeiture recovered by the director shall
90 be paid to the treasurer and then distributed to the public schools as
91 required by Article IX, section 7 of the Missouri Constitution.

92 12. The penalties and forfeitures authorized by this section
93 govern all actions and proceedings that are instituted on the basis of
94 conduct occurring after August 28, 2006.

 374.051. 1. Any applicant refused a license or the renewal of a
2 license by order of the director under sections 374.755, 374.787, and
3 375.141 may file a petition with the administrative hearing commission
4 alleging that the director has refused the license. The administrative
5 hearing commission shall conduct hearings and make findings of fact
6 and conclusions of law in determining whether the applicant may be
7 disqualified by statute. Notwithstanding section 621.120, RSMo, the
8 director shall retain discretion in refusing a license or renewal and
9 such discretion shall not transfer to the administrative hearing
10 commission.

11 2. If a proceeding is instituted to revoke or suspend a license of
12 any person under sections 374.755, 374.787, and 375.141, the director
13 shall refer the matter to the administrative hearing commission by
14 directing the filing of a complaint. The administrative hearing
15 commission shall conduct hearings and make findings of fact and
16 conclusions of law in such cases. The director shall have the burden of
17 proving cause for discipline. If cause is found, the administrative
18 hearing commission shall submit its findings of fact and conclusions of
19 law to the director, who may determine appropriate discipline.

20 3. Hearing procedures before the director or the administrative
21 hearing commission and judicial review of the decisions and orders of
22 the director and of the administrative hearing commission, and all
23 other procedural matters under this chapter, shall be governed by the
24 provisions of chapter 536, RSMo. Hearings before the administrative
25 hearing commission shall also be governed by the provisions of chapter
26 621, RSMo.

 374.055. 1. Except as otherwise provided, any interested person
2 aggrieved by any order of the director under the laws of this state
3 relating to insurance in this chapter, chapter 354 and chapters 375 to
4 385, RSMo, or a rule adopted by the director, or by any refusal or
5 failure of the director to make an order pursuant to any of said
6 provisions, shall be entitled to a hearing before the director in
7 accordance with the provisions of chapter 536, RSMo. A final order
8 issued by the director is subject to judicial review in accordance with

9 the provisions of chapter 536, RSMo. However, any findings of fact or
10 conclusions of law in any order regarding the actual costs of the
11 investigation or proceedings under section 374.046, or the classification
12 of any violation under section 374.049, shall be subject to de novo
13 review.

14 2. A rule adopted by the director is subject to judicial review in
15 accordance with the provisions of chapter 536, RSMo.

374.185. 1. The director may cooperate, coordinate, consult, and
2 subject to sections 374.070, 374.071, and 374.205, share records and
3 information with other members of the National Association of
4 Insurance Commissioners, the commissioner of securities, state
5 securities regulators, the division of finance, the attorney general,
6 federal banking and securities regulators, the National Association of
7 Securities Dealers (NASD), the United States Department of Justice, the
8 Commodity Futures Trading Commission, and the Federal Trade
9 Commission to effectuate greater uniformity in insurance and financial
10 services regulation among state and federal governments, and self-
11 regulatory organizations.

12 2. In cooperating, coordinating, consulting, and sharing records
13 and information under this section and in acting by rule, order, or
14 waiver under the laws relating to the business of insurance, the
15 director shall, at the discretion of the director, take into consideration
16 in carrying out the public interest the following general policies:

17 (1) Maximizing effectiveness of regulation for the protection of
18 insurance consumers;

19 (2) Maximizing uniformity in regulatory standards; and

20 (3) Minimizing burdens on the business of insurance, without
21 adversely affecting essentials of consumer protection.

22 3. The cooperation, coordination, consultation, and sharing of
23 records and information authorized by this section includes:

24 (1) Establishing or employing one or more designees as a central
25 electronic depository for licensing and rate and form filings with the
26 director and for records required or allowed to be maintained;

27 (2) Encouraging insurance companies and producers to
28 implement electronic filing through a central electronic depository;

29 (3) Developing and maintaining uniform forms;

30 (4) Conducting joint market conduct examinations and other

31 **investigations through collaboration and cooperation with other**
32 **insurance regulators;**

33 **(5) Holding joint administrative hearings;**

34 **(6) Instituting and prosecuting joint civil or administrative**
35 **enforcement proceedings;**

36 **(7) Sharing and exchanging personnel;**

37 **(8) Coordinating licensing under section 375.014;**

38 **(9) Formulating rules, statements of policy, guidelines, forms, no**
39 **action determinations, and bulletins; and**

40 **(10) Formulating common systems and procedures.**

374.150. 1. All fees due the state under the provisions of the insurance
2 laws of this state shall be paid to the director of revenue and deposited in the
3 state treasury to the credit of the insurance department fund unless otherwise
4 provided for in subsection 2 of this section.

5 2. There is hereby established in the state treasury a special fund to be
6 known as the "Department of Insurance Dedicated Fund". The fund shall be
7 subject to appropriation of the general assembly and shall be devoted solely to the
8 payment of expenditures incurred by the department of insurance attributable to
9 duties performed by the department **for the regulation of the business of**
10 **insurance and the operation of the division of consumer affairs** as
11 required by law which are not paid for by another source of funds. Other
12 provisions of law to the contrary notwithstanding, beginning on January 1, 1991,
13 all fees charged under any provision of chapter 325, 354, 374, 375, 376, 377, 378,
14 379, 380, 381, 382, 383, 384 or 385, RSMo, due the state shall be paid into this
15 fund. The state treasurer shall invest moneys in this fund in the same manner
16 as other state funds and any interest or earnings on such moneys shall be
17 credited to the department of insurance dedicated fund. The provisions of section
18 33.080, RSMo, notwithstanding, moneys in the fund shall not lapse, be
19 transferred to or placed to the credit of the general revenue fund unless and then
20 only to the extent to which the unencumbered balance at the close of the
21 biennium year exceeds two times the total amount appropriated, paid, or
22 transferred to the fund during such fiscal year.

23 [3. Notwithstanding the provisions of this section to the contrary, fifty-five
24 percent of the balance in the department of insurance dedicated fund as of the
25 effective date of this act or six million fifteen thousand eight hundred and
26 fifty-five dollars, whichever is greater, shall be subject to an immediate one-time

27 transfer to the state general revenue fund.]

374.160. 1. The expenses of examinations, valuations or proceedings
2 against any company, and for dissolving or settling the affairs of companies are
3 to be paid by the company, or as provided by law. The state shall not be
4 responsible in any manner for the payment of any such expenses, or any charges
5 connected therewith.

6 2. All other expenses of the department of insurance now or hereafter
7 incurred and unpaid, or that may be hereafter incurred, including the salaries of
8 the director and deputy director, shall be paid out of the state treasury in the
9 manner provided by law.

10 3. The director shall assess the expenses of any examination against the
11 company examined and shall order that the examination expenses be paid into
12 the insurance examiners fund created by section 374.162. [The director shall also
13 assess an additional amount equal to fifteen percent of the total expenses of
14 examination, to be paid for the supervision and support of the examiners. The
15 insurance examiner's sick leave fund created by sections 374.261 to 374.267 shall
16 be combined with the insurance examiners fund.] **This assessment shall**
17 **include the costs of compensation, including benefits, for the**
18 **examiners, analysts, actuaries, and attorneys directly contributing to**
19 **the examination of the company, any reasonable travel, lodging, and**
20 **meal expenses related to an on-site examination, subject to limits**
21 **established for the relevant state agency of the employee incurring**
22 **such expenses and other expenses related to the examination of the**
23 **company, including an allocation for examiners' office space, supplies,**
24 **and equipment, but not expenses associated with attending a course,**
25 **seminar, or conference, unless solely related to the examination of the**
26 **company assessed. Any such assessment, if requested by the company**
27 **being examined, shall include an itemized report prepared by the**
28 **director or the director's designee that indicates all expenses listed in**
29 **this subsection.** The director shall pay from the insurance examiners fund the
30 compensation of insurance examiners [pursuant to section 374.115, any expenses
31 to be paid from such sick leave fund under sections 374.261 to 374.267, and
32 expenses incurred for supervision and support of the examiners], **analysts,**
33 **actuaries, and attorneys, including standard benefits afforded to state**
34 **employees, for performance of any such examination and other**
35 **expenses covered in the assessment.** The general assembly shall annually

36 provide appropriations sufficient to distribute all receipts into the insurance
37 examiners fund. The provisions of section 33.080, RSMo, relating to the transfer
38 of unexpended balances to the general revenue fund shall not apply to the
39 insurance examiners fund.

40 4. If any company shall refuse to pay the expenses of any examination,
41 valuation or proceeding assessed by the director pursuant to this section, the
42 company shall be liable for double the amount of such expenses and all costs of
43 collection, including attorney's fees. The company shall not be entitled to a
44 credit, pursuant to section 148.400, RSMo, for any fees, expenses or costs ordered
45 pursuant to this subsection other than in the amount of the expenses originally
46 assessed by the director. All amounts collected pursuant to this subsection shall
47 be credited to the insurance examiners fund.

374.210. 1. **It is unlawful for** any person [testifying falsely in reference
2 to any matter material to the investigation, examination or inquiry shall be
3 deemed guilty of perjury.] **in any investigation, examination, inquiry, or
4 other proceeding under the insurance laws of this state to:**

5 [2. Any person who shall refuse to give such director full and truthful
6 information, and answer in writing to any inquiry or question made in writing by
7 the director, in regard to the business of insurance carried on by such person, or
8 to appear and testify under oath before the director in regard to the same, shall
9 be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be
10 punished by a fine not exceeding five hundred dollars, or imprisonment not
11 exceeding three months.

12 3. Any director, officer, manager, agent or employee of any insurance
13 company, or any other person, who shall]

14 **(1) Knowingly make or cause to be made a false statement in
15 testimony upon oath or affirmation or in any record that is submitted
16 to the director or used in any proceeding under the laws of this state
17 relating to insurance; or**

18 **(2) Make any false certificate or entry or memorandum upon any of the
19 books or papers of any insurance company, or upon any statement or exhibit
20 offered, filed or offered to be filed in the department of insurance [department],
21 or used in the course of any examination, inquiry, or investigation[, with intent
22 to deceive the director or any person employed or appointed by him to make any
23 examination, inquiry or investigation, shall, upon conviction, be punished by a
24 fine not exceeding one thousand dollars, and by imprisonment not less than two**

25 months in the county or city jail, nor more than five years in the penitentiary].

26 **2. It is unlawful for any person to not appear or refuse to testify,**
27 **file a statement, produce records, or otherwise not comply with a**
28 **subpoena issued by the director.**

29 **3. It is unlawful for any person to fail to appear or refuse to**
30 **testify, file a statement, produce records, or otherwise not comply with**
31 **a written request as required by the director, or in response to any**
32 **specific inquiry or question made in writing by the director in regard**
33 **to the business of insurance carried on by such person, to refuse to**
34 **provide the requested information in a written answer.**

35 **4. If the director determines that a person has engaged, is**
36 **engaging, or is about to engage in a violation of this section, or a rule**
37 **adopted or order issued pursuant thereto, or that a person has**
38 **materially aided, is materially aiding, or is about to materially aid an**
39 **act, practice, omission, or course of business constituting a violation of**
40 **this section or a rule adopted or order issued pursuant thereto, the**
41 **director may issue such administrative orders as authorized under**
42 **section 374.046. A violation of subsection 1 of this section is a level four**
43 **violation under section 374.049. A violation of subsection 2 of this**
44 **section is a level three violation under section 374.049. A violation of**
45 **subsection 3 of this section is a level two violation under section**
46 **374.049. The director of insurance may also suspend or revoke the**
47 **license or certificate of authority of such person for any willful**
48 **violation.**

49 **5. If the director believes that a person has engaged, is engaging,**
50 **or is about to engage in a violation of this section or a rule adopted or**
51 **order issued pursuant thereto, or that a person has materially aided,**
52 **is materially aiding, or is about to materially aid an act, practice,**
53 **omission, or course of business constituting a violation of this section**
54 **or a rule adopted or order issued pursuant thereto, the director may**
55 **maintain a civil action for relief authorized under section 374.048. A**
56 **violation of subsection 1 of this section is a level four violation under**
57 **section 374.049. A violation of subsection 2 of this section is a level**
58 **three violation under section 374.049. A violation of subsection 3 of this**
59 **section is a level two violation under section 374.049.**

60 **6. Any person who knowingly engages in any act, practice,**
61 **omission, or course of business in violation of subsection 1 of this**

62 **section is guilty of a class D felony. Any person who knowingly engages**
63 **in any act, practice, omission, or course of business in violation of**
64 **subsection 2 of this section is guilty of a class B misdemeanor. If the**
65 **offender holds a license or certificate of authority under the insurance**
66 **laws of this state, the court imposing sentence shall order the**
67 **department of insurance to revoke such license or certificate of**
68 **authority.**

69 **7. The director may refer such evidence as is available**
70 **concerning violations of this section to the proper prosecuting**
71 **attorney, who with or without a criminal reference, or the attorney**
72 **general under section 27.030, RSMo, may institute the appropriate**
73 **criminal proceedings.**

74 **8. Nothing in this section shall limit the power of the state to**
75 **punish any person for any conduct that constitutes a crime under any**
76 **other state statute.**

374.215. 1. If any insurance company doing business in this state fails
2 to timely make and file any statutorily required report or statement, the
3 department of insurance shall notify such company of such failure by first class
4 mail. Any **insurance** company notified by the department of insurance pursuant
5 to this section shall [have] **file such report or statement within** fifteen days
6 [to make and file such report. If such company fails to make and file such report
7 within the fifteen days, it shall forfeit one hundred dollars for each day after the
8 fifteen-day grace period expires] **of receiving notification. After the**
9 **expiration of such fifteen days, each day in which the insurance**
10 **company fails to file such report or statement is a separate violation of**
11 **this section.**

12 **2. [Any insurance company doing business in this state which knowingly**
13 **or intentionally files or which has filed on its behalf any materially false report**
14 **or statement forfeits not more than one thousand dollars] If the director**
15 **determines that a person has engaged in a violation of this section or**
16 **a rule adopted or order issued pursuant thereto, or that a person has**
17 **materially aided an act, practice, omission, or course of business**
18 **constituting a violation of this section or a rule adopted or order issued**
19 **pursuant thereto, the director may issue such administrative orders as**
20 **authorized under section 374.046. A violation of this section is a level**
21 **two violation under section 374.049. The director of insurance may also**
22 **suspend or revoke the certificate of authority of such person for any**

23 **willful violation.**

24 3. [Any forfeiture required or permitted by this section shall be considered
25 a civil penalty which the director of the department of insurance may order
26 pursuant to the provisions of sections 374.040 and 374.280] **If the director**
27 **believes that a person has engaged in a violation of this section or a**
28 **rule adopted or order issued pursuant thereto, or that a person has**
29 **materially aided an act, practice, omission, or course of business**
30 **constituting a violation of this section or a rule adopted or order issued**
31 **pursuant thereto, the director may maintain a civil action for relief**
32 **authorized under section 374.048. A violation of this section is a level**
33 **two violation under section 374.049.**

374.230. Every insurance company doing business in this state shall pay
2 to the director of revenue the following fees:

3 (1) [For making valuations of policies or other obligations of assurance,
4 one thousand dollars for all ordinary forms of policies, and the cost of computing
5 special evaluation tables for policy forms requiring such shall be added;

6 (2)] For filing the declaration required on organization of each company,
7 **two hundred** fifty dollars;

8 [(3)] (2) For filing statement and certified copy of charter required of
9 foreign companies, **two hundred** fifty dollars;

10 [(4)] (3) For filing **application to renew certificate of authority,**
11 **along with all required annual reports, including the** annual statement,
12 **actuarial statement, risk based capital report, report of valuation of**
13 **policies or other obligations of assurance, and audited financial report**
14 of any company doing business in this state, [two hundred fifty] **one thousand**
15 **five hundred** dollars;

16 [(5)] (4) For filing supplementary annual statement of any company
17 doing business in this state, [ten] **fifty** dollars;

18 [(6)] (5) For filing any [other] paper, **document, or report not filed**
19 **under subdivisions (1), (2), or (3), but** required to be filed in the office of the
20 director of the department of insurance, fifty dollars each;

21 [(7)] (6) For [each agent's] a copy of [his] a company's certificate of
22 authority or **producer or agent** license, [two] **ten** dollars;

23 [(8)] (5) For copies of papers, records, and documents filed in the office of the
24 director of the department of insurance, twenty cents per folio;

25 [(9)] (7) For affixing the seal of office of the director of the department of

26 insurance, ten dollars;

27 [(10)] (8) For accepting each service of process upon the company, ten
28 dollars.

 374.280. 1. [Notwithstanding any other provisions of chapters 374, 375,
2 376, 377, 378 and 379, RSMo,] The director may, after a hearing **under**
3 **subsection 374.046**, order a **civil penalty or forfeiture** to the state of Missouri
4 a sum [not to exceed one hundred dollars for each violation by any person,
5 partnership or corporation knowingly violating any provision of chapters 374, 375,
6 376, 377, 378 and 379, RSMo, or order of the director of insurance made in
7 accordance with those chapters] **authorized by section 374.049**, which
8 **penalty or forfeiture, if unpaid within ten days**, may be recovered by a civil
9 action brought by and in the name of the director of insurance **under section**
10 **374.048**. The civil action may be brought in the county which has venue of an
11 action against the person, partnership or corporation under other provisions of
12 law. The director of insurance may also suspend or revoke the license [of an
13 insurer, agent, broker or agency] **or certificate of authority of such person**
14 for any willful violation.

15 2. Nothing contained in this section shall be construed to prohibit the
16 director and [the insurer, agent, broker or agency] **any person subject to an**
17 **investigation, examination, or other proceeding** from agreeing to a
18 voluntary forfeiture of the sum mentioned herein without civil proceedings being
19 instituted. Any sum so agreed upon shall be paid into the school fund as
20 provided by law for other fines and penalties.

 374.512. 1. Whenever the director has reason to believe that a utilization
2 review agent subject to sections 374.500 to 374.515 has been or is engaged in
3 conduct which violates the provisions of sections 374.500 to 374.515, the director
4 shall notify the utilization review agent of the alleged violation. The utilization
5 review agent shall have thirty days from the date the notice is received to
6 respond to the alleged violation.

7 2. If the director [believes] **determines** that the utilization review agent
8 has [violated the provisions of sections 374.500 to 374.515, or is not satisfied that
9 the alleged violation has been corrected, he shall conduct a hearing on the alleged
10 violation, in accordance with chapter 536, RSMo] **engaged, is engaging, or is**
11 **about to engage in a violation of sections 374.500 to 374.515 or a rule**
12 **adopted or order issued pursuant thereto, or that a person has**
13 **materially aided, is materially aiding, or is about to materially aid an**

14 **act, practice, omission, or course of business constituting a violation of**
15 **sections 374.500 to 374.515 or a rule adopted or order issued pursuant**
16 **thereto, the director may issue such administrative orders as**
17 **authorized under section 374.046. A violation of any of these sections**
18 **is a level two violation under section 374.049. The director of insurance**
19 **may also suspend or revoke the license or certificate of authority of**
20 **such person for any willful violation.**

21 3. [If, after such hearing, the director determines that the utilization
22 review agent has engaged in violations of sections 374.500 to 374.515, he shall
23 reduce his findings to writing and shall issue and cause to be served upon the
24 utilization review agent a copy of such findings and an order requiring the
25 utilization review agent to cease and desist from engaging in such violations. The
26 director may also, at his discretion, order:

27 (1) Payment of a monetary penalty of not more than ten thousand dollars
28 for a violation which occurred if the utilization review agent consciously
29 disregarded sections 374.500 to 374.515 or which occurred with such frequency
30 as to indicate a general business practice; or

31 (2) Suspension or revocation of the authority to do business in this state
32 as a utilization review agent if the utilization review agent knew that it was in
33 violation of sections 374.500 to 374.515] **If the director believes that a**
34 **person has engaged in a violation of sections 374.500 to 374.515 or a**
35 **rule adopted or order issued pursuant thereto, or that a person has**
36 **materially aided an act, practice, omission, or course of business**
37 **constituting a violation of sections 374.500 to 374.515 or a rule adopted**
38 **or order issued pursuant thereto, the director may maintain a civil**
39 **action for relief authorized under section 374.048. A violation of any of**
40 **these sections is a level two violation under section 374.049.**

374.755. 1. The [department] **director** may [cause a complaint to be
2 filed with the administrative hearing commission as provided by chapter 621,
3 RSMo, against any holder of any license required by sections 374.695 to 374.775]
4 **suspend, revoke, refuse to issue, refuse to renew or limit a license**
5 **authorized under sections 374.695 to 374.775, or censure or bar any**
6 **person who has failed to renew or has surrendered his or her license for any [one**
7 **or any combination] of the following causes:**

8 (1) Use of any controlled substance, as defined in chapter 195, RSMo, or
9 alcoholic beverage to an extent that such use impairs a person's ability to perform

10 the work of the profession licensed under sections 374.695 to 374.775;

11 (2) Final adjudication or a plea of guilty or nolo contendere [within the
12 past fifteen years] in a criminal prosecution under any state or federal law for a
13 felony or a crime involving moral turpitude whether or not a sentence is
14 imposed[, prior to issuance of license date];

15 (3) Use of fraud, deception, misrepresentation or bribery in securing any
16 license or in obtaining permission to take any examination required pursuant to
17 sections 374.695 to 374.775;

18 (4) Obtaining or attempting to obtain any compensation as a member of
19 the profession licensed by sections 374.695 to [374.775] **374.789** by means of
20 fraud, deception or misrepresentation;

21 (5) Misappropriation of the premium, collateral, or other things of value
22 given to a bail bond agent or a general bail bond agent for the taking of bail,
23 incompetency, misconduct, gross negligence, fraud, or misrepresentation in the
24 performance of the functions or duties of the profession licensed or regulated by
25 sections 374.695 to 374.775;

26 (6) Violation of any provision of or any obligation imposed by the laws of
27 this state, department of insurance rules and regulations, or aiding or abetting
28 other persons to violate such laws, orders, rules or regulations, or subpoenas;

29 (7) Transferring a license or permitting another person to use a license
30 of the licensee;

31 (8) Disciplinary action against the holder of a license or other right to
32 practice the profession regulated by sections 374.695 to 374.789 granted by
33 another state, territory, federal agency or country upon grounds for which
34 revocation or suspension is authorized in this state;

35 (9) Being finally adjudged insane or incompetent by a court of competent
36 jurisdiction;

37 (10) Assisting or enabling any person to practice or offer to practice the
38 profession licensed or regulated by sections 374.695 to 374.789 who is not
39 currently licensed and eligible to practice pursuant to sections 374.695 to 374.789;

40 (11) Acting in the capacity of an attorney at a trial or hearing of a person
41 for whom the attorney is acting as surety; **or**

42 (12) Failing to provide a copy of the bail contract, renumbered written
43 receipt for acceptance of money, or other collateral for the taking of bail to the
44 principal, if requested by any person who is a party to the bail contract, or any
45 person providing funds or collateral for bail on the principal's behalf.

46 2. After the filing of [such] a complaint **under section 374.051**, the
47 proceedings shall be conducted in accordance with the provisions of chapter 621,
48 RSMo. Upon a finding by the administrative hearing commission that one or
49 more of the causes stated in subsection 1 of this section have been met, the
50 director may suspend or revoke the license or enter into an agreement for a
51 [monetary or other penalty pursuant to section 374.280] **consent order under**
52 **section 374.780.**

53 3. In lieu of filing a complaint at the administrative hearing commission,
54 the director and the bail bond agent or general bail bond agent may enter into an
55 agreement for a [monetary or other penalty pursuant to section 374.280] **consent**
56 **order under section 374.780.**

57 [4. In addition to any other remedies available, the director may issue a
58 cease and desist order or may seek an injunction in a court of competent
59 jurisdiction pursuant to the provisions of section 374.046 whenever it appears
60 that any person is acting as a bail bond agent or general bail bond agent without
61 a license or violating any other provisions of sections 374.695 to 374.789.]

374.780. 1. If the director determines that a person has engaged,
2 **is engaging, or is about to engage in a violation of sections 374.695 to**
3 **374.789 or a rule adopted or order issued pursuant thereto, or that a**
4 **person has materially aided, is materially aiding, or is about to**
5 **materially aid an act, practice, omission, or course of business**
6 **constituting a violation of sections 374.695 to 374.789 or a rule adopted**
7 **or order issued pursuant thereto, the director may issue such**
8 **administrative orders as authorized under section 374.046. A violation**
9 **of any of these sections is a level one violation under section 374.049.**

10 **2. If the director believes that a person has engaged, is engaging,**
11 **or is about to engage in a violation of sections 374.695 to 374.789 or a**
12 **rule adopted or order issued pursuant thereto, or that a person has**
13 **materially aided, is materially aiding, or is about to materially aid an**
14 **act, practice, omission, or course of business constituting a violation of**
15 **sections 374.695 to 374.789 or a rule adopted or order issued pursuant**
16 **thereto, the director may maintain a civil action for relief authorized**
17 **under section 374.048. A violation of any of these sections is a level one**
18 **violation under section 374.049.**

 374.787. 1. The director may [cause a complaint to be filed with the
2 administrative hearing commission as provided by chapter 621, RSMo, against

3 any] **suspend, revoke, refuse to issue, refuse to renew, or limit a** surety
4 recovery agent **license authorized under sections 374.783 to 374.789, or**
5 **censure or bar** any person who has failed to renew or has surrendered his or
6 her license, for any [one or any combination] of the following causes:

7 (1) Violation of any provisions of, or any obligations imposed by, the laws
8 of this state, the department of insurance rules and regulations, or aiding or
9 abetting other persons to violate such laws, orders, rules, or regulations;

10 (2) Final adjudication or a plea of guilty or nolo contendere in a criminal
11 prosecution under state or federal law for a felony or a crime involving moral
12 turpitude, whether or not a sentence is imposed;

13 (3) Using fraud, deception, misrepresentation, or bribery in securing a
14 license or in obtaining permission to take any examination required by sections
15 374.783 to 374.789;

16 (4) Obtaining or attempting to obtain any compensation as a surety
17 recovery agent by means of fraud, deception, or misrepresentation;

18 (5) Acting as a surety recovery agent or aiding or abetting another in
19 acting as a surety recovery agent without a license;

20 (6) Incompetence, misconduct, gross negligence, fraud, or
21 misrepresentation in the performance of the functions or duties of a surety
22 recovery agent;

23 (7) Having a license revoked or suspended that was issued by another
24 state.

25 2. After the filing of [the] a complaint **under section 374.051**, the
26 proceedings shall be conducted in accordance with the provisions of chapter 621,
27 RSMo. Upon a finding by the administrative hearing commission that one or
28 more of the causes stated in subsection 1 of this section have been met, the
29 director may suspend or revoke the license or enter into an agreement for a
30 [monetary or other penalty pursuant to section 374.280] **consent order under**
31 **section 374.780**.

32 3. In lieu of filing a complaint with the administrative hearing
33 commission, the director and the surety recovery agent may enter into an
34 agreement for a [monetary or other penalty pursuant to section 374.280] **consent**
35 **order under section 374.780**.

36 [4. In addition to any other remedies available, the director may issue a
37 cease and desist order or may seek an injunction in a court of law pursuant to
38 section 374.046 whenever it appears that any person is acting as a surety

39 recovery agent without a license.]

374.789. 1. [A] **It is unlawful for any person [is guilty of a class D
2 felony if he or she does not hold a valid] to engage in any of the following
3 acts unless the person is licensed by the director as a surety recovery
4 agent [license or], a bail bond [license and commits any of the following acts]
5 agent, or a general bail bond agent:**

6 (1) Holds himself or herself out to be a licensed surety recovery agent
7 within this state;

8 (2) Claims that he or she can render surety recovery agent services; or

9 (3) Engages in fugitive recovery in this state.

10 2. **If the director determines that a person has engaged, is
11 engaging, or is about to engage in a violation of this section or a rule
12 adopted or order issued pursuant thereto, or that a person has
13 materially aided, is materially aiding, or is about to materially aid an
14 act, practice, omission, or course of business constituting a violation of
15 this section or a rule adopted or order issued pursuant thereto, the
16 director may issue such administrative orders as authorized under
17 section 374.046. A violation of any of these sections is a level three
18 violation under section 374.049.**

19 3. **If the director believes that a person has engaged, is engaging,
20 or is about to engage in a violation of this section or a rule adopted or
21 order issued pursuant thereto, or that a person has materially aided,
22 is materially aiding, or is about to materially aid an act, practice,
23 omission, or course of business constituting a violation of this section
24 or a rule adopted or order issued pursuant thereto, the director may
25 maintain a civil action for relief authorized under section 374.048. A
26 violation of any of these sections is a level three violation under section
27 374.049.**

28 4. **Any person who knowingly engages in any act, practice,
29 omission, or course of business in violation of this section is guilty of
30 a class D felony. If the offender holds a license or certificate of
31 authority under the insurance laws of this state, the court imposing
32 sentence shall order the department of insurance to revoke such license
33 or certificate of authority.**

34 5. **The director may refer such evidence as is available
35 concerning violations of this chapter to the proper prosecuting
36 attorney, who with or without a criminal reference, or the attorney**

37 **general under section 27.030, RSMo, may institute the appropriate**
38 **criminal proceedings.**

39 **6. Nothing in this section shall limit the power of the state to**
40 **punish any person for any conduct that constitutes a crime under any**
41 **other state statute.**

42 **7. Any person who engages in fugitive recovery in this state and**
43 **wrongfully causes damage to any person or property, including, but not limited**
44 **to, unlawful apprehension, unlawful detainment, or assault, shall be liable for**
45 **such damages and may be liable for punitive damages.**

375.001. As used in sections 375.001 to 375.008 the following words and
2 terms mean:

3 (1) **"Claim", unless otherwise defined in sections 375.001 to**
4 **375.008, any specific request or demand for payment of a loss which**
5 **may be included within the terms of coverage of an insurance policy. No**
6 **inquiry into whether a policy will cover a loss or as to the type or level**
7 **of coverage, shall be considered a claim;**

8 (2) **"Insurer", all insurance companies, reciprocals, or interinsurance**
9 **exchanges transacting the business of insurance in this state;**

10 [(2)] (3) **"Nonpayment of premium", failure of the named insured to**
11 **discharge when due any of his obligations in connection with the payment of**
12 **premiums on the policy, or any installment of the premium, whether the premium**
13 **is payable directly to the insurer or its [agent] producer or indirectly under any**
14 **premium finance plan or extension of credit;**

15 [(3)] (4) **"Nonrenewal", the determination of an insurer not to issue or**
16 **deliver a policy replacing at the end of the policy period a policy previously issued**
17 **and delivered by the same insurer or a certificate or notice extending the term of**
18 **a policy beyond its policy period or term;**

19 [(4)] (5) **"Policy", a contract of insurance providing fire and extended**
20 **coverage insurance, whether separately or in combination with other coverages,**
21 **on owner-occupied habitational property not exceeding two families. "Policy" does**
22 **not include any insurance contracts issued under a property insurance inspection**
23 **and placement program ("FAIR" plan) or an assigned risk plan, or any insurance**
24 **contracts insuring property not used predominantly for habitational purposes, or**
25 **an insurance contract insuring a mobile home;**

26 [(5)] (6) **"Renewal" or "to renew", the issuance and delivery by an insurer**
27 **of a policy replacing at the end of the policy period a policy previously issued and**

28 delivered by the same insurer, or the issuance and delivery of a certificate or
29 notice extending the term of the policy beyond its policy period or term. Any
30 policy with a policy period or term of less than six months shall for the purposes
31 of sections 375.001 to 375.008 be considered as if written for a policy period or
32 term of six months. Any policy written for a term longer than one year or any
33 policy with no fixed expiration date, shall for the purpose of sections 375.001 to
34 375.008, be considered as if written for successive policy periods or terms of one
35 year, and the policy may be terminated at the expiration of any annual period
36 upon giving thirty days' notice of cancellation prior to the anniversary date, and
37 the cancellation shall not be subject to any other provisions of sections 375.001
38 to 375.008;

39 **(7) "Weather-related claim", loss resulting from an act of God**
40 **which an insured is unable to control and is unable to reasonably**
41 **reduce the risk that such peril will damage the insured property.**

375.007. 1. No insurer shall cancel or refuse to write or refuse to renew
2 a policy solely because of the age, place of residence, race, sex, color, creed,
3 national origin, ancestry or lawful occupation, including the military service, of
4 anyone who is or seeks to become insured or solely because another insurer has
5 refused to write a policy, or has canceled or has refused to renew an existing
6 policy in which that person was the named insured, nor shall any insurance
7 company or its agent or representative require any applicant or policyholder to
8 divulge in a written application or otherwise whether any insurer has canceled
9 or refused to renew or issue to the applicant or policyholder a policy of
10 insurance. The provisions of this section do not apply to those instances where
11 the hazard insured against under a policy is increased because of exposure to loss
12 attributable solely to the place of residence or lawful occupation of anyone who
13 is or seeks to be insured.

14 **2. No insurer shall cancel or refuse to write or refuse to renew**
15 **a policy on the basis of any of the following:**

16 **(1) One or more weather-related claims; or**

17 **(2) One or more inquiries by the insured into whether a policy**
18 **will cover a loss or as to the type or level of coverage.**

19 **3. No insurer shall use a rating plan or rating system that**
20 **surcharges an individual's policy premium based upon weather-related**
21 **claims or inquiries as described in subsection 2 of this section.**

375.012. 1. Sections 375.012 to 375.146 may be cited as the

2 **"Insurance Producers Act".**

3 2. As used in sections 375.012 to 375.158, the following words mean:

4 (1) "Business entity", a corporation, association, partnership, limited
5 liability company, limited liability partnership or other legal entity;

6 (2) "Director", the director of the department of insurance;

7 (3) "Home state", the District of Columbia and any state or territory of the
8 United States in which the insurance producer maintains his or her principal
9 place of residence or principal place of business and is licensed to act as an
10 insurance producer;

11 (4) "Insurance", any line of authority, including life, accident and health
12 or sickness, property, casualty, variable life and variable annuity products,
13 personal, credit and any other line of authority permitted by state law or
14 regulation;

15 (5) "Insurance company" or "insurer", any person, reciprocal exchange,
16 interinsurer, Lloyds insurer, fraternal benefit society, and any other legal entity
17 engaged in the business of insurance, including health services corporations,
18 health maintenance organizations, prepaid limited health care service plans,
19 dental, optometric and other similar health service plans, unless their exclusion
20 from this definition can be clearly ascertained from the context of the particular
21 statutory section under consideration. Insurer shall also include all companies
22 organized, incorporated or doing business pursuant to the provisions of chapters
23 375, 376, 377, 378, 379, 381 and 384, RSMo. Trusteed pension plans and
24 profit-sharing plans qualified pursuant to the United States Internal Revenue
25 Code as now or hereafter amended shall not be considered to be insurance
26 companies or insurers within the definition of this section;

27 (6) "Insurance producer" or "producer", a person required to be licensed
28 pursuant to the laws of this state to sell, solicit or negotiate insurance;

29 (7) "License", a document issued by the director authorizing a person to
30 act as an insurance producer for the lines of authority specified in the
31 document. The license itself shall not create any authority, actual, apparent or
32 inherent, in the holder to represent or commit an insurance company;

33 (8) "Limited line credit insurance", credit life, credit disability, credit
34 property, credit unemployment, involuntary unemployment, mortgage life,
35 mortgage guaranty, mortgage disability, guaranteed automobile protection
36 (GAP) insurance, and any other form of insurance offered in connection with an
37 extension of credit that is limited to partially or wholly extinguishing that credit

38 obligation that the director determines should be designated a form of limited line
39 credit insurance;

40 (9) "Limited line credit insurance producer", a person who sells, solicits
41 or negotiates one or more forms of limited line credit insurance coverage through
42 a master, corporate, group or individual policy;

43 (10) "Limited lines insurance", insurance involved in credit transactions,
44 insurance contracts issued primarily for covering the risk of travel or any other
45 line of insurance that the director deems necessary to recognize for the purposes
46 of complying with subsection 5 of section 375.017;

47 (11) "Limited lines producer", a person authorized by the director to sell,
48 solicit or negotiate limited lines insurance;

49 (12) "Negotiate", the act of conferring directly with or offering advice
50 directly to a purchaser or prospective purchaser of a particular contract of
51 insurance concerning any of the substantive benefits, terms or conditions of the
52 contract, provided that the person engaged in that act either sells insurance or
53 obtains insurance from insurers for purchasers;

54 (13) "Person", an individual or any business entity;

55 (14) "Personal lines insurance", property and casualty insurance coverage
56 sold to individuals and families for primarily noncommercial purposes;

57 (15) "Sell", to exchange a contract of insurance by any means, for money
58 or its equivalent, on behalf of an insurance company;

59 (16) "Solicit", attempting to sell insurance or asking or urging a person to
60 apply for a particular kind of insurance from a particular company;

61 (17) "Terminate", the cancellation of the relationship between an
62 insurance producer and the insurer or the termination of the authority of the
63 producer to transact the business of insurance;

64 (18) "Uniform business entity application", the current version of the
65 National Association of Insurance Commissioners uniform business entity
66 application for resident and nonresident business entities seeking an insurance
67 producer license;

68 (19) "Uniform application", the current version of the National Association
69 of Insurance Commissioners uniform application for resident and nonresident
70 producer licensing.

71 [2.] 3. All statutory references to "insurance agent" or "insurance broker"
72 shall mean "insurance producer", as that term is defined pursuant to subsection
73 1 of this section.

375.020. 1. Beginning January 1, [1990] **2007**, each insurance producer,
2 unless exempt pursuant to section 375.016, licensed to sell insurance in this state
3 shall successfully complete courses of study as required by this section. Any
4 person licensed to act as an insurance producer shall, during each two years,
5 attend courses or programs of instruction or attend seminars equivalent to a
6 minimum of [ten] **twenty-four** hours of instruction for a life or accident and
7 health license or both a life and an accident and health license and a minimum
8 [ten] **twenty-four** hours of instruction for a property or casualty license or both
9 a property and a casualty license. [Sixteen] **Twenty-four** hours of training will
10 suffice for those with a life, health, accident, property and casualty license. Of
11 the [sixteen] **twenty-four** hours' training required above, the hours need not be
12 divided equally. The courses or programs shall include instruction on Missouri
13 law, **a producer's duties to the department, and business ethics,**
14 **including sales suitability.** Course credit shall be given to members of the
15 general assembly as determined by the department.

16 2. Subject to approval by the director, the courses or programs of
17 instruction which shall be deemed to meet the director's standards for continuing
18 educational requirements shall include, but not be limited to, the following:

- 19 (1) American College Courses (CLU, ChFC);
- 20 (2) Life Underwriters Training Council (LUTC);
- 21 (3) Certified Insurance Counselor (CIC);
- 22 (4) Chartered Property and Casualty Underwriter (CPCU);
- 23 (5) Insurance Institute of America (IIA);
- 24 (6) **Any other professional financial designation approved by the**
25 **director;**
- 26 (7) An insurance-related course taught by an accredited college or
27 university or qualified instructor who has taught a course of insurance law at
28 such institution;

29 [(7)] (8) A course or program of instruction or seminar developed or
30 sponsored by any authorized insurer, recognized producer association or
31 insurance trade association. A local producer group may also be approved if the
32 instructor receives no compensation for services.

33 3. A person teaching any approved course of instruction or lecturing at
34 any approved seminar shall qualify for the same number of classroom hours as
35 would be granted to a person taking and successfully completing such course,
36 seminar or program.

37 4. Excess classroom hours accumulated during any two-year period may
38 be carried forward to the two-year period immediately following the two-year
39 period in which the course, program or seminar was held.

40 5. For good cause shown, the director may grant an extension of time
41 during which the educational requirements imposed by this section may be
42 completed, but such extension of time shall not exceed the period of one calendar
43 year. The director may grant an individual waiver of the mandatory continuing
44 education requirement upon a showing by the licensee that it is not feasible for
45 the licensee to satisfy the requirements prior to the renewal date. Waivers may
46 be granted for reasons including, but not limited to:

- 47 (1) Serious physical injury or illness;
48 (2) Active duty in the armed services for an extended period of time;
49 (3) Residence outside the United States; or
50 (4) The licensee is at least seventy years of age.

51 6. Every person subject to the provisions of this section shall furnish in
52 a form satisfactory to the director, written certification as to the courses,
53 programs or seminars of instruction taken and successfully completed by such
54 person. Every provider of continuing education courses authorized in this state
55 shall, within thirty working days of a licensed producer completing its approved
56 course, provide certification to the director of the completion in a format
57 prescribed by the director.

58 7. The provisions of this section shall not apply to those natural persons
59 holding licenses for any kind or kinds of insurance for which an examination is
60 not required by the law of this state, nor shall they apply to any limited lines
61 insurance producer license or restricted license as the director may exempt.

62 8. The provisions of this section shall not apply to a life insurance
63 producer who is limited by the terms of a written agreement with the insurer to
64 transact only specific life insurance policies having an initial face amount of five
65 thousand dollars or less, or annuities having an initial face amount of ten
66 thousand dollars or less, that are designated by the purchaser for the payment
67 of funeral or burial expenses. The director may require the insurer entering into
68 the written agreements with the insurance producers pursuant to this subsection
69 to certify as to the representations of the insurance producers.

70 9. Rules and regulations necessary to implement and administer this
71 section shall be promulgated by the director, including, but not limited to, rules
72 and regulations regarding the following:

73 (1) Course content and hour credits: The insurance advisory board
74 established by section 375.019 shall be utilized by the director to assist him in
75 determining acceptable content of courses, programs and seminars to include
76 classroom equivalency;

77 (2) Filing fees for course approval: Every applicant seeking approval by
78 the director of a continuing education course under this section shall pay to the
79 director a filing fee of fifty dollars per course. Fees shall be waived for state and
80 local insurance producer groups. Such fee shall accompany any application form
81 required by the director. Courses shall be approved for a period of no more than
82 one year. Applicants holding courses intended to be offered for a longer period
83 must reapply for approval. Courses approved by the director prior to August 28,
84 1993, for which continuous certification is sought should be resubmitted for
85 approval sixty days before the anniversary date of the previous approval.

86 10. All funds received pursuant to the provisions of this section shall be
87 transmitted by the director to the department of revenue for deposit in the state
88 treasury to the credit of the department of insurance dedicated fund. All
89 expenditures necessitated by this section shall be paid from funds appropriated
90 from the department of insurance dedicated fund by the legislature.

**375.143. In order to effectuate and aid in the interpretation of
2 section 375.141, the director, under section 374.045, RSMo, may adopt
3 rules and regulations codifying professional standards of producer
4 competency and trustworthiness in the handling of applications,
5 premium funds, conflicts of interest, record-keeping, supervision of
6 others, and customer suitability.**

**375.145. 1. If the director determines that a person has engaged,
2 is engaging, or is about to engage in a violation of sections 375.012 to
3 375.144 or a rule adopted or order issued pursuant thereto, or that a
4 person has materially aided, is materially aiding, or is about to
5 materially aid an act, practice, omission, or course of business
6 constituting a violation of sections 375.012 to 375.144, or a rule adopted
7 or order issued pursuant thereto, the director may issue such
8 administrative orders as authorized under section 374.046, RSMo. A
9 violation of any of sections 375.012 to 375.142 is a level two violation
10 under section 374.049, RSMo. A violation of section 375.144 is a level
11 four violation under 374.049, RSMo.**

12 **2. If the director believes that a person has engaged, is engaging,**

13 or is about to engage in a violation of this section or a rule adopted or
14 order issued pursuant thereto, or that a person has materially aided,
15 is materially aiding, or is about to materially aid an act, practice,
16 omission, or course of business constituting a violation of this section
17 or a rule adopted or order issued pursuant thereto, the director may
18 maintain a civil action for relief authorized under section 374.048,
19 RSMo. A violation of any of sections 375.012 to 375.142 is a level two
20 violation under section 374.049, RSMo. A violation of section 375.144 is
21 a level four violation under 374.049, RSMo.

375.152. 1. [If the director finds after a hearing conducted in accordance
2 with chapter 536, RSMo, that any person has violated the provisions of sections
3 375.147 to 375.153, the director may order:

4 (1) For each separate violation, imposition of an administrative penalty
5 in an amount of five hundred dollars. All moneys collected as a result of
6 imposition of such penalties shall be transferred to the state treasurer for deposit
7 to general revenue of the state;

8 (2) Revocation or suspension of the producer's license, provided that such
9 action may be taken only after compliance with chapter 621, RSMo;

10 (3)] If the director determines that a person has engaged, is
11 engaging, or is about to engage in a violation of sections 375.147 to
12 375.153 or a rule adopted or order issued pursuant thereto, or that a
13 person has materially aided, is materially aiding, or is about to
14 materially aid an act, practice, omission, or course of business
15 constituting a violation of sections 375.147 to 375.153 or a rule adopted
16 or order issued pursuant thereto, the director may issue such
17 administrative orders as authorized under section 374.046, RSMo. A
18 violation of any of these sections is a level two violation under section
19 374.049, RSMo.

20 2. If the director believes that a person has engaged, is engaging,
21 or is about to engage in a violation of sections 375.147 to 375.153 or a
22 rule adopted or order issued pursuant thereto, or that a person has
23 materially aided, is materially aiding, or is about to materially aid an
24 act, practice, omission, or course of business constituting a violation of
25 sections 375.147 to 375.153 or a rule adopted or order issued pursuant
26 thereto, the director may maintain a civil action for relief authorized
27 under section 374.048, RSMo. A violation under any of these sections
28 is a level two violation under section 374.049, RSMo. In addition to the

29 **relief available in this section, the director may also order** the managing
30 general agent to reimburse the insurer, the rehabilitator or liquidator of the
31 insurer, for any losses incurred by the insurer caused by a violation of sections
32 375.147 to 375.153 committed by the managing general agent.

33 [2. The decision, determination or order of the director made pursuant to
34 subsection 1 of this section shall be subject to judicial review pursuant to sections
35 536.100 to 536.140, RSMo.]

36 3. Nothing contained in this section shall affect the right of the director
37 to impose any other penalties provided for in the insurance law.

38 4. Nothing contained in sections 375.147 to 375.153 is intended to or shall
39 in any manner limit or restrict the rights of policyholders, claimants and
40 creditors.

375.236. Other provisions of law notwithstanding, the director may
2 suspend or revoke, after a hearing, the certificate of authority or license of any
3 insurance company including a reciprocal or interinsurance exchange for the
4 same reasons and upon the same grounds as set forth in section [375.560]
5 **374.047, RSMo.**

375.306. 1. It [shall not be lawful] **is unlawful** for any person to act
2 within this state as agent, **producer**, or otherwise, in receiving or procuring
3 applications for insurance, or in any manner to aid in transacting the business
4 referred to in [sections 375.010 to 375.920] **this chapter** for any company or
5 association doing business in this state, unless the company is possessed of the
6 amount of capital and of actual paid-up capital, or of premium notes, cash
7 premiums or guarantee fund, of the kind, character and amounts required of
8 companies organized under the provisions of [sections 375.010 to 375.920] **this**
9 **chapter.**

10 2. The guarantee fund of companies other than those of this state shall
11 be deposited with the proper officer of the state or country under the laws of
12 which the company is organized, or with the director of the insurance department
13 of this state, in the manner provided by section 379.050, RSMo, in regard to the
14 making of such deposit by companies organized under [sections 375.010 to
15 375.920] **this chapter.**

16 3. Whenever any insurance company doing business in this state
17 advertises its assets, either in any newspaper or periodical, or by any sign,
18 circular, card, policy of insurance or certificate of renewal thereof, it shall, in the
19 same connection, equally conspicuously advertise its liabilities, and the amount

20 of its assets available for fire and life losses separately, the same to be
21 determined in the manner required in making statement to the insurance
22 department, and all advertisements purporting to show the amount of capital of
23 the company shall show only the amount of capital actually paid up in cash.

24 4. [Any insurance company or agent thereof violating the provisions of
25 this section shall be liable to a fine of not less than fifty dollars nor more than
26 five hundred dollars] **If the director determines that a person has**
27 **engaged, is engaging, or is about to engage in a violation of this section**
28 **or a rule adopted or order issued pursuant thereto, or that a person has**
29 **materially aided, is materially aiding, or is about to materially aid an**
30 **act, practice, omission, or course of business constituting a violation of**
31 **this section or a rule adopted or order issued pursuant thereto, the**
32 **director may issue such administrative orders as authorized under**
33 **section 374.046, RSMo. A violation of this section is a level two**
34 **violation under section 374.049, RSMo.**

35 5. **If the director believes that a person has engaged, is engaging,**
36 **or is about to engage in a violation of this section or a rule adopted or**
37 **order issued pursuant thereto, or that a person has materially aided,**
38 **is materially aiding, or is about to materially aid an act, practice,**
39 **omission, or course of business constituting a violation of this section**
40 **or a rule adopted or order issued pursuant thereto, the director may**
41 **maintain a civil action for relief authorized under section 374.048,**
42 **RSMo. A violation of this section is a level two violation under section**
43 **374.049, RSMo.**

375.310. 1. **It is unlawful for any person,** association of individuals,
2 **[and] or any corporation [transacting] to transact** in this state any insurance
3 business[, without being] **unless the person, association, or corporation is**
4 **duly** authorized by the director [of the insurance department of this state so to
5 do, or after the authority so to do has been suspended, revoked, or has expired,
6 shall be subject to suit by the director who may institute proceedings in the
7 circuit court of the county or city in which said company was organized, or in
8 which it has, or last had, its principal or chief office or place of business, or in the
9 county of Cole, to enjoin said company from the further transaction of its
10 business, either temporarily or perpetually, and for such other decrees and relief
11 as the court shall deem advisable; or said association of individuals or corporation
12 shall be liable to a penalty of two hundred and fifty dollars for each offense,

13 which penalty may be recovered by ordinary civil action in the name of the state,
14 and shall, when recovered, become part of the school fund, as by law provided for
15 other fines and penalties; suit for said penalty may be brought by the attorney
16 general, the director of the insurance department, or any county, circuit or
17 prosecuting attorney, in either the city or county in which the policy was
18 delivered, or in which the money was paid to any agent of such association or
19 corporation, or in which the receipt was delivered, or in any county or city in
20 which an attorney for service or any agent of said association or corporation may
21 be found; and if the plaintiff recover, an attorney fee to be allowed by the court
22 for each cause of action upon which recovery is had shall be taxed as and added
23 to the costs; service shall be made of process in any such action, either as in other
24 civil actions or as provided in sections 375.010 to 375.920 for service on insurance
25 companies] **under a certificate of authority or appropriate licensure, or**
26 **is an insurance company exempt from certification under section**
27 **375.786.**

28 **2. If the director determines that a person has engaged, is**
29 **engaging, or is about to engage in a violation of this section or a rule**
30 **adopted or order issued pursuant thereto, or that a person has**
31 **materially aided, is materially aiding, or is about to materially aid an**
32 **act, practice, omission, or course of business constituting a violation of**
33 **this section or a rule adopted or order issued pursuant thereto, the**
34 **director may issue such administrative orders as authorized under**
35 **section 374.046, RSMo. A violation of this section is a level four**
36 **violation under section 374.049, RSMo.**

37 **3. If the director believes that a person has engaged, is engaging,**
38 **or is about to engage in a violation of this section or a rule adopted or**
39 **order issued pursuant thereto, or that a person has materially aided,**
40 **is materially aiding, or is about to materially aid an act, practice,**
41 **omission, or course of business constituting a violation of this section**
42 **or a rule adopted or order issued pursuant thereto, the director may**
43 **maintain a civil action for relief authorized under section 374.048,**
44 **RSMo. A violation of this section is a level four violation under section**
45 **374.049, RSMo.**

46 **4. Any person who knowingly engages in any act, practice,**
47 **omission, or course of business in violation of this section is guilty of**
48 **a class D felony.**

49 **5. The director may refer such evidence as is available**
50 **concerning violations of this chapter to the proper prosecuting**
51 **attorney, who with or without a criminal reference, or the attorney**
52 **general under section 27.030, RSMo, may institute the appropriate**
53 **criminal proceedings.**

54 **6. Nothing in this section shall limit the power of the state to**
55 **punish any person for any conduct that constitutes a crime under any**
56 **other state statute.**

 375.445. 1. [When upon investigation the director finds that] **It is**
2 **unlawful for any insurance company transacting business [in] under the**
3 **laws of this state [has conducted] to:**

4 **(1) Conduct** its business fraudulently[, is not carrying];
5 **(2) Fail to carry** out its contracts in good faith[,]; or [is]
6 **(3) Habitually and as a matter of business practice [compelling] compel**
7 claimants under policies or liability judgment creditors of the insured to either
8 accept less than the amount due under the terms of the policy or resort to
9 litigation against the company to secure payment of the amount due[, and that
10 a proceeding in respect thereto would be in the interest of the public, he shall
11 issue and serve upon the company a statement of the charges in that respect and
12 a notice of a hearing thereon].

13 2. [If after the hearing the director shall determine that the company has
14 fraudulently conducted its business as defined in this section, he shall order the
15 company to cease and desist from the fraudulent practice and may suspend the
16 company's certificate of authority for a period not to exceed thirty days and may
17 in addition order a forfeiture to the state of Missouri of a sum not to exceed one
18 thousand dollars, which forfeiture may be recovered by a civil action brought by
19 and in the name of the director of insurance. The civil action may be brought in
20 the circuit court of Cole County or, at the option of the director of insurance, in
21 another county which has venue of an action against the person, partnership or
22 corporation under other provisions of law.] **If the director determines that a**
23 **person has engaged, is engaging, or is about to engage in a violation of**
24 **this section or a rule adopted or order issued pursuant thereto, or that**
25 **a person has materially aided, is materially aiding, or is about to**
26 **materially aid an act, practice, omission, or course of business**
27 **constituting a violation of this section or a rule adopted or order issued**
28 **pursuant thereto, the director may issue such administrative orders as**

29 **authorized under section 374.046, RSMo. A violation of this section is**
30 **a level three violation under section 374.049, RSMo. The director of**
31 **insurance may also suspend or revoke the license [of an insurer or agent] or**
32 **certificate of authority of such person for any [such] willful violation.**

33 **3. If the director believes that a person has engaged, is engaging,**
34 **or is about to engage in a violation of this section or a rule adopted or**
35 **order issued pursuant thereto, or that a person has materially aided,**
36 **is materially aiding, or is about to materially aid an act, practice,**
37 **omission, or course of business constituting a violation of this section**
38 **or a rule adopted or order issued pursuant thereto, the director may**
39 **maintain a civil action for relief authorized under section 374.048,**
40 **RSMo. A violation of this section is a level three violation under**
41 **section 374.049, RSMo.**

375.720. 1. Whenever, by chapter 375, or by any other law of this state,
2 the director is authorized or required to take possession of any of the general
3 assets of any insurer, **it is unlawful for any person or company [who shall] to**
4 **knowingly neglect or refuse to deliver to the director, on [his] order or demand**
5 **of the director, any books, papers, evidences of title or debt, or any property**
6 **belonging to any such insurer in its, his or their possession, or under his, its or**
7 **their control[, shall be guilty of a class C felony].**

8 **2. If the director determines that a person has engaged, is**
9 **engaging, or is about to engage in a violation of this section or a rule**
10 **adopted or order issued pursuant thereto, or that a person has**
11 **materially aided, is materially aiding, or is about to materially aid an**
12 **act, practice, omission, or course of business constituting a violation of**
13 **this section or a rule adopted or order issued pursuant thereto, the**
14 **director may issue such administrative orders as authorized under**
15 **section 374.046, RSMo. A violation of this section is a level three**
16 **violation under section 374.049, RSMo. The director of insurance may**
17 **also suspend or revoke the license or certificate of authority of such**
18 **person for any willful violation.**

19 **3. If the director believes that a person has engaged, is engaging,**
20 **or is about to engage in a violation of this section or a rule adopted or**
21 **order issued pursuant thereto, or that a person has materially aided,**
22 **is materially aiding, or is about to materially aid an act, practice,**
23 **omission, or course of business constituting a violation of this section**
24 **or a rule adopted or order issued pursuant thereto, the director may**

25 maintain a civil action for relief authorized under section 374.048,
26 RSMo. A violation of this section is a level three violation under
27 section 374.049, RSMo.

28 4. Any person who knowingly engages in any act, practice,
29 omission, or course of business in violation of this section is guilty of
30 a class C felony. If the offender holds a license or certificate of
31 authority under the insurance laws of this state, the court imposing
32 sentence shall order the department of insurance to revoke such
33 license.

34 5. The director may refer such evidence as is available
35 concerning violations of this section to the proper prosecuting
36 attorney, who with or without a criminal reference, or the attorney
37 general under section 27.030, RSMo, may institute the appropriate
38 criminal proceedings.

39 6. Nothing in this section shall limit the power of the state to
40 punish any person for any conduct that constitutes a crime under any
41 other state statute.

375.777. 1. The director shall:

2 (1) Notify the association of the existence of an insolvent insurer not later
3 than three days after he receives notice of the determination of the insolvency;

4 (2) Upon request of the board of directors, provide the association with a
5 statement of the net direct written premiums of each member insurer; and

6 (3) Notify the agents of the insolvent insurer of the determination of
7 insolvency and of the insureds' rights under sections 375.771 to 375.779. Such
8 notification shall be by first class mail at their last known address, where
9 available, but if sufficient information for notification by mail is not available,
10 notice by publication in a newspaper of general circulation shall be sufficient.

11 2. The director may[:

12 (1)] require each agent of the insolvent insurer to give prompt written
13 notice, by first class mail, at the insured's last known address, to each insured of
14 the insolvent insurer for whom he was agent of record, provided the agent has
15 received the notification of subsection 1 of this section[; and

16 (2) Suspend or revoke, after notice and hearing, the certificate of authority
17 to transact insurance in this state of].

18 3. It is unlawful for any member insurer [which fails] to fail to pay an
19 assessment when due or [fails] fail to comply with the plan of operation. [As an

20 alternative, the director may levy an administrative penalty on any member
21 insurer which fails to pay an assessment when due. Such administrative penalty
22 shall not exceed five percent of the unpaid assessment per month, except that no
23 administrative penalty shall be less than one hundred dollars per month.

24 3. Any final action or order of the director under this section shall be
25 subject to judicial review in the circuit court of Cole County] **Every day in**
26 **which the member insurer fails to pay is a separate violation.**

27 4. **If the director determines that a person has engaged, is**
28 **engaging, or is about to engage in a violation of this section or a rule**
29 **adopted or order issued pursuant thereto, or that a person has**
30 **materially aided, is materially aiding, or is about to materially aid an**
31 **act, practice, omission, or course of business constituting a violation of**
32 **this section or a rule adopted or order issued pursuant thereto, the**
33 **director may issue such administrative orders as authorized under**
34 **section 374.046, RSMo. A violation of this section is a level two**
35 **violation under section 374.049, RSMo. The director of insurance may**
36 **also suspend or revoke the license or certificate of authority of such**
37 **person for any willful violation.**

38 5. **If the director believes that a person has engaged, is engaging,**
39 **or is about to engage in a violation of this section or a rule adopted or**
40 **order issued pursuant thereto, or that a person has materially aided,**
41 **is materially aiding, or is about to materially aid an act, practice,**
42 **omission, or course of business constituting a violation of this section**
43 **or a rule adopted or order issued pursuant thereto, the director may**
44 **maintain a civil action for relief authorized under section 374.048,**
45 **RSMo. A violation of this section is a level two violation under section**
46 **374.049, RSMo.**

375.780. [Every violation of] 1. **A person commits a crime if he**
2 **willfully violates** any of the provisions of [sections 375.010 to 375.920] **this**
3 **chapter. If** not otherwise specifically provided for [shall be deemed a
4 misdemeanor, and shall subject the individual, association of individuals or
5 corporation violating the same to a penalty of not less than fifty nor more than
6 five hundred dollars for each offense; such penalty may be recovered and sued for
7 against corporations or associations in the manner provided and by any of the
8 officers designated in section 375.310, and against individuals by civil action, by
9 information or by indictment, and an attorney's fee of twenty-five dollars shall be

10 taxed as costs against the defendant, as in said section; all fines and penalties
11 recovered under sections 375.010 to 375.920 shall be turned into the school fund,
12 as provided by law for other fines and penalties], **the crime is a class B**
13 **misdemeanor.**

14 **2. The director may refer such evidence as is available**
15 **concerning violations of this section to the proper prosecuting**
16 **attorney, who with or without a criminal reference, or the attorney**
17 **general under section 27.030, RSMo, may institute the appropriate**
18 **criminal proceedings.**

19 **3. Nothing in this section shall limit the power of the state to**
20 **punish any person for any conduct that constitutes a crime under any**
21 **other state statute.**

375.786. 1. It [shall be] is unlawful for any insurance company to
2 transact insurance business in this state, as set forth in subsection 2, without a
3 certificate of authority from the director; provided, however, that this section
4 shall not apply to:

5 (1) The lawful transaction of insurance as provided in chapter 384, RSMo;

6 (2) The lawful transaction of reinsurance by insurance companies;

7 (3) Transactions in this state involving a policy lawfully solicited, written
8 and delivered outside of this state covering only subjects of insurance not
9 resident, located or expressly to be performed in this state at the time of issuance,
10 and which transactions are subsequent to the issuance of such policy;

11 (4) Attorneys acting in the ordinary relation of attorney and client in the
12 adjustment of claims or losses;

13 (5) Transactions in this state involving group life and group sickness and
14 accident or blanket sickness and accident insurance or group annuities where the
15 master policy of such groups was lawfully issued and delivered in and pursuant
16 to the laws of a state in which the insurance company was authorized to do an
17 insurance business, to a group organized for purposes other than the procurement
18 of insurance, and where the policyholder is domiciled or otherwise has a bona fide
19 situs;

20 (6) Transactions in this state involving any policy of insurance or annuity
21 contract issued prior to August 13, 1972;

22 (7) Transactions in this state relative to a policy issued or to be issued
23 outside this state involving insurance on vessels, craft or hulls, cargoes, marine
24 builder's risk, marine protection and indemnity or other risk, including strikes

25 and war risks commonly insured under ocean or wet marine forms of policy;

26 (8) Except as provided in chapter 384, RSMo, transactions in this state
27 involving contracts of insurance issued to one or more industrial insureds;
28 provided that nothing herein shall relieve an industrial insured from taxation
29 imposed upon independently procured insurance. An "industrial insured" is
30 hereby defined as an insured:

31 (a) Which procures the insurance of any risk or risks other than life,
32 health and annuity contracts by use of the services of a full-time employee acting
33 as an insurance manager or buyer or the services of [a regularly and continuously
34 retained qualified insurance consultant] **an insurance producer whose**
35 **services are wholly compensated by such insured and not by the**
36 **insurer;**

37 (b) Whose aggregate annual premiums for insurance excluding workers'
38 compensation insurance premiums total at least [twenty-five] **one hundred**
39 thousand dollars; and

40 (c) Which has at least twenty-five full-time employees;

41 (9) Transactions in this state involving life insurance, health insurance
42 or annuities provided to educational or religious or charitable institutions
43 organized and operated without profit to any private shareholder or individual
44 for the benefit of such institutions and individuals engaged in the service of such
45 institutions, provided that any company issuing such contracts under this
46 paragraph shall:

47 (a) File a copy of any policy or contract issued to Missouri residents with
48 the director;

49 (b) File a copy of its annual statement prepared pursuant to the laws of
50 its state of domicile, as well as such other financial material as may be requested,
51 with the director; and

52 (c) Provide, in such form as may be acceptable to the director, for the
53 appointment of the director as its true and lawful attorney upon whom may be
54 served all lawful process in any action or proceeding against such company
55 arising out of any policy or contract it has issued to, or which is currently held
56 by, a Missouri citizen, and process so served against such company shall have the
57 same form and validity as if served upon the company;

58 (10) Transactions in this state involving accident, health, personal effects,
59 liability or any other travel or auto-related products or coverages provided or sold
60 by a rental company after January 1, 1994, to a renter in connection with and

61 incidental to the rental of motor vehicles.

62 2. Any of the following acts in this state effected by mail or otherwise by
63 or on behalf of an unauthorized insurance company is deemed to constitute the
64 transaction of an insurance business in this state: (The venue of an act
65 committed by mail is at the point where the matter transmitted by mail is
66 delivered and takes effect. Unless otherwise indicated, the term "insurance
67 company" as used in sections 375.786 to 375.790 includes all corporations,
68 associations, partnerships and individuals engaged as principals in the business
69 of insurance and also includes interinsurance exchanges and mutual benefit
70 societies.)

71 (1) The making of or proposing to make an insurance contract;

72 (2) The making of or proposing to make, as guarantor or surety, any
73 contract of guaranty or suretyship as a vocation and not merely incidental to any
74 other legitimate business or activity of the guarantor or surety;

75 (3) The taking or receiving of any application for insurance;

76 (4) The receiving or collection of any premium, commission, membership
77 fees, assessments, dues or other consideration for any insurance or any part
78 thereof;

79 (5) The issuance or delivery of contracts of insurance to residents of this
80 state or to persons authorized to do business in this state;

81 (6) Directly or indirectly acting as an agent for or otherwise representing
82 or aiding on behalf of another any person or insurance company in the
83 solicitation, negotiation, procurement or effectuation of insurance or renewals
84 thereof or in the dissemination of information as to coverage or rates, or
85 forwarding of applications, or delivery of policies or contracts, or inspection of
86 risks, a fixing of rates or investigation or adjustment of claims or losses or in the
87 transaction of matters subsequent to effectuation of the contract and arising out
88 of it, or in any other manner representing or assisting a person or insurance
89 company in the transaction of insurance with respect to subjects of insurance
90 resident, located or to be performed in this state. The provisions of this
91 subsection shall not operate to prohibit full-time salaried employees of a corporate
92 insured from acting in the capacity of an insurance manager or buyer in placing
93 insurance in behalf of such employer;

94 (7) The transaction of any kind of insurance business specifically
95 recognized as transacting an insurance business within the meaning of the
96 statutes relating to insurance;

97 (8) The transacting or proposing to transact any insurance business in
98 substance equivalent to any of the foregoing in a manner designed to evade the
99 provisions of the statutes.

100 3. (1) The failure of an insurance company transacting insurance
101 business in this state to obtain a certificate of authority shall not impair the
102 validity of any act or contract of such insurance company and shall not prevent
103 such insurance company from defending any action at law or suit in equity in any
104 court of this state, but no insurance company transacting insurance business in
105 this state without a certificate of authority shall be permitted to maintain an
106 action in any court of this state to enforce any right, claim or demand arising out
107 of the transaction of such business until such insurance company shall have
108 obtained a certificate of authority.

109 (2) In the event of failure of any such unauthorized insurance company
110 to pay any claim or loss within the provisions of such insurance contract, any
111 person who assisted or in any manner aided directly or indirectly in the
112 procurement of such insurance contract shall be liable to the insured for the full
113 amount of the claim or loss in the manner provided by the provisions of such
114 insurance contract.

115 4. **If the director determines that a person has engaged, is**
116 **engaging, or is about to engage in a violation of this section or a rule**
117 **adopted or order issued pursuant thereto, or that a person has**
118 **materially aided, is materially aiding, or is about to materially aid an**
119 **act, practice, omission, or course of business constituting a violation of**
120 **this section or a rule adopted or order issued pursuant thereto, the**
121 **director may issue such administrative orders as authorized under**
122 **section 374.046, RSMo. A violation of this section is a level four**
123 **violation under section 374.049, RSMo.**

124 5. **If the director believes that a person has engaged, is engaging,**
125 **or is about to engage in a violation of this section or a rule adopted or**
126 **order issued pursuant thereto, or that a person has materially aided,**
127 **is materially aiding, or is about to materially aid an act, practice,**
128 **omission, or course of business constituting a violation of this section**
129 **or a rule adopted or order issued pursuant thereto, the director may**
130 **maintain a civil action for relief authorized under section 374.048,**
131 **RSMo. A violation of this section is a level four violation under section**
132 **374.049, RSMo.**

133 **6.** Any person who transacts insurance business without a certificate of
134 authority, as provided in this section, is guilty of a class C felony.

135 **7.** The director may refer such evidence as is available
136 concerning violations of this chapter to the proper prosecuting
137 attorney, who with or without a criminal reference, or the attorney
138 general under section 27.030, RSMo, may institute the appropriate
139 criminal proceedings.

140 **8.** Nothing in this section shall limit the power of the state to
141 punish any person for any conduct that constitutes a crime in any other
142 state statute.

375.881. [1.] The director may revoke or suspend the certificate of
2 authority of a foreign insurance company [or may by order require the insurance
3 company to pay to the people of the state of Missouri a penalty in a sum not
4 exceeding five hundred dollars and upon failure of the insurance company to pay
5 the penalty within twenty days after the mailing of the order, postage prepaid,
6 certified, and addressed to the last known place of business of the insurance
7 company, unless the order is stayed by an order of a court of competent
8 jurisdiction, the director of insurance may revoke or suspend the license of the
9 insurance company for any period of time] **under section 374.047, RSMo, or**
10 **issue such administrative orders as appropriate under section 374.046,**
11 **RSMo**, whenever he finds that the company

12 (1) Is insolvent;

13 (2) Fails to comply with the requirements for admission in respect to
14 capital, the investment of its assets or the maintenance of deposits in this or
15 other state or fails to maintain the surplus which similar domestic companies
16 transacting the same kinds of business are required to maintain;

17 (3) Is in such a financial condition that its further transaction of business
18 in this state would be hazardous to policyholders and creditors in this state and
19 to the public;

20 (4) Has refused or neglected to pay a valid final judgment against the
21 company within thirty days after the rendition of the judgment;

22 (5) Has refused to submit to the jurisdiction of a court of this state upon
23 the grounds of diversity of citizenship in a cause of action arising out of business
24 transacted, acts done, or contracts made in this state by the foreign insurance
25 company;

26 (6) Has violated any law of this state or has in this state violated its

27 charter or exceeded its corporate powers;

28 (7) Has refused to submit its books, papers, accounts, records, or affairs
29 to the reasonable inspection or examination of the director, his actuaries,
30 deputies or examiners;

31 (8) Has an officer who has refused upon reasonable demand to be
32 examined under oath touching its affairs;

33 (9) Fails to file its annual statement within thirty days after the date
34 when it is required by law to file the statement;

35 (10) Fails to file with the director a copy of an amendment to its charter
36 or articles of association within thirty days after the effective date of the
37 amendment;

38 (11) Fails to file with the director copies of the agreement and certificate
39 of merger and the financial statements of the merged companies, if required,
40 within thirty days after the effective date of the merger;

41 (12) Fails to pay any fees, taxes or charges prescribed by the laws of this
42 state within thirty days after they are due and payable; provided, however, that
43 in case of objection or legal contest the company shall not be required to pay the
44 tax until thirty days after final disposition of the objection or legal contest;

45 (13) Fails to file any report for the purpose of enabling the director to
46 compute the taxes to be paid by the company within thirty days after the date
47 when it is required by law to file the report;

48 (14) Has had its corporate existence dissolved or its certificate of authority
49 revoked in the state or country in which it was organized;

50 (15) Has had all its risks reinsured in their entirety in another company;
51 or

52 (16) Has ceased to transact the business of insurance in this state for a
53 period of one year.

54 [2. The director shall not revoke or suspend the certificate of authority of
55 a foreign insurance company until he has given the company at least twenty days'
56 notice of the revocation or suspension and of the grounds therefor and has
57 afforded the company an opportunity for a hearing.]

375.940. [1.] Whenever the director shall have reason to believe that any
2 person or insurer has been engaged or is engaging in this state in any unfair
3 method of competition or any unfair or deceptive act or practice **in violation of**
4 **sections 375.930 to 375.948**, and that a proceeding by [him] **the director** in
5 respect thereto would be to the interest of the public, [he] **the director** shall

6 issue and serve upon such person or insurer a statement of the charges [in that
7 respect and a notice of hearing thereon to be held at a time and place fixed in the
8 notice which shall not be less than twenty days after the date of service thereof.

9 2. At the time and place fixed for such hearing, such person or insurer
10 shall have an opportunity to be heard to show cause why an order should not be
11 made by the director requiring such person or insurer to cease and desist from
12 the acts, methods or practices so complained of. Upon good cause shown, the
13 director shall permit any person to intervene, appear and be heard at such
14 hearing by counsel or in person. Nothing herein shall preclude the informal
15 disposition of any case by stipulation, consent order, or default, or by agreed
16 settlement where such settlement is in conformity with law.

17 3. Nothing contained in sections 375.930 to 375.948 shall require the
18 observance at any such hearing of formal rules of pleading or evidence.

19 4. Upon such hearing, the director shall have power to examine and
20 cross-examine witnesses, receive oral and documentary evidence, administer
21 oaths, subpoena witnesses and compel their attendance, and require the
22 production of books, papers, records, correspondence and all other written
23 instruments or documents which he deems relevant to the inquiry. The director,
24 upon any such hearing, shall cause to be made a record of all the evidence and
25 all the proceedings had at such hearing. In case of a refusal of any person to
26 comply with any subpoena issued hereunder or to testify with respect to any
27 matter concerning which he may be lawfully interrogated, the circuit court of Cole
28 County or the county where such party resides, or may be found, on application
29 of the director, may issue an order requiring such person to comply with such
30 subpoena and to testify; and any failure to obey any such order of the court may
31 be punished by the court as a contempt thereof.

32 5. Statements of charges, notices, orders, and other processes of the
33 director under sections 375.930 to 375.948 may be served by anyone duly
34 authorized by the director either in the manner provided by law for service of
35 process in civil actions, or by registering or certifying and mailing a copy thereof
36 to the person affected by such statement, notice, order, or other process at his or
37 its residence or principal office or place of business. The verified return by the
38 person so serving such statement, notice, order or other process, setting forth the
39 manner of such service, shall be proof of the same, and the return postcard
40 receipt for such statement, notice, order or other process, registered and mailed
41 as aforesaid, shall be proof of the service of the same] **under the procedures**

42 set forth in section 374.046, RSMo.

375.942. 1. [If, after such hearing, the director determines that the
2 person charged has engaged in an unfair method of competition or in an unfair
3 or deceptive act or practice prohibited by section 375.934 or 375.937, he shall
4 reduce his findings to writing and shall issue and cause to be served upon the
5 person charged with the violation a copy of such findings and an order requiring
6 such person to cease and desist from engaging in such method of competition, act
7 or practice, and thereafter the director may, at his discretion, order one or more
8 of the following:

9 (1) Payment of a monetary penalty of not more than one thousand dollars
10 for each violation but not to exceed an aggregate penalty of one hundred thousand
11 dollars in any twelve-month period unless the violation was committed flagrantly
12 and in conscious disregard of section 375.934 or 375.937, in which case the
13 penalty shall be not more than twenty-five thousand dollars for each violation but
14 not to exceed an aggregate penalty of two hundred fifty thousand dollars in any
15 twelve-month period;

16 (2) Suspension or revocation of the insurer's license if such insurer knew
17 or reasonably should have known it was in violation of section 375.934 or 375.937.

18 2. Until the expiration of the time allowed under section 375.944 for filing
19 a petition for judicial review, if no such petition has been duly filed within such
20 time or, if a petition for review has been filed within such time, then until the
21 transcript of the record in the proceeding has been filed in the circuit court of
22 Cole County, the director may at any time, upon such notice and in such manner
23 as he shall deem proper, modify or set aside in whole or in part any order issued
24 by him under this section.

25 3. After the expiration of the time allowed for filing such a petition for
26 review, if no such petition has been duly filed within such time, the director may
27 at any time, after notice and opportunity for hearing, reopen and alter, modify or
28 set aside, in whole or in part, any order issued by him under this section,
29 whenever in his opinion conditions of fact or of law have so changed as to require
30 such action or if the public interest shall so require.

31 4. Nothing contained in sections 375.930 to 375.948 shall be construed to
32 prohibit the director and the person from agreeing to a voluntary forfeiture with
33 or without proceedings being instituted. Any sum so agreed upon shall be paid
34 into the school fund as provided by law for other fines and penalties] **If the**
35 **director determines that an insurer has engaged, is engaging, or is**

36 **about to engage in a violation of sections 375.930 to 375.948 or a rule**
37 **adopted or order issued pursuant thereto, or that a person has**
38 **materially aided, is materially aiding, or is about to materially aid a**
39 **practice constituting a violation of sections 375.930 to 375.948 or a rule**
40 **adopted or order issued pursuant thereto, the director may issue such**
41 **administrative orders as authorized under section 374.046, RSMo. Each**
42 **practice in violation of section 375.934 is a level two violation under**
43 **section 374.049, RSMo. Each act as part of a trade practice does not**
44 **constitute a separate violation under section 374.049, RSMo. The**
45 **director of insurance may also suspend or revoke the license or**
46 **certificate of authority of an insurer for any willful violation.**

47 **2. If the director believes that an insurer has engaged, is**
48 **engaging, or is about to engage in a violation of sections 375.930 to**
49 **375.948 or a rule adopted or order issued pursuant thereto, or that a**
50 **person has materially aided, is materially aiding, or is about to**
51 **materially aid a practice constituting a violation of sections 375.930 to**
52 **375.948 or a rule adopted or order issued pursuant thereto, the director**
53 **may maintain a civil action for relief authorized under section 374.048,**
54 **RSMo. Each practice in violation of section 375.934 is a level two**
55 **violation under section 374.049, RSMo. Each act as part of a trade**
56 **practice does not constitute a separate violation under section 374.049,**
57 **RSMo.**

375.946. [Any person who violates] **It is unlawful for any person to**
2 **violate any provision of** a cease and desist order of the director under section
3 375.942[, while such order is in effect, may, after notice and hearing, and upon
4 order of the director, be subject to either or both of the following:

5 (1) A monetary penalty of not more than twenty-five thousand dollars for
6 each and every act or violation not to exceed an aggregate amount of two hundred
7 fifty thousand dollars pursuant to any such hearing; or

8 (2) Suspension or revocation of such person's license or certificate of
9 authority]. **The director may institute an action under sections 374.046**
10 **and 374.047, RSMo, as necessary to enforce any such order.**

375.994. 1. Department investigators shall have the power to serve
2 subpoenas issued for the examination, investigation, and trial of all offenses
3 determined by their investigations.

4 2. It is unlawful for any person to interfere, either by abetting or assisting

5 such resistance or otherwise interfering, with department investigators in the
6 duties imposed upon them by law or department rule.

7 3. Any moneys, or other property which is awarded to the department as
8 costs of investigation, or as a fine, shall be credited to the department of
9 insurance dedicated fund created by section 374.150, RSMo.

10 4. **If the director determines that a person has engaged, is**
11 **engaging, or is about to engage in a violation of section 375.991 or a**
12 **rule adopted or order issued pursuant thereto, or that a person has**
13 **materially aided, is materially aiding, or is about to materially aid an**
14 **act, practice, omission, or course of business constituting a violation of**
15 **section 375.991 or a rule adopted or order issued pursuant thereto, the**
16 **director may issue such administrative orders as authorized under**
17 **section 374.046, RSMo. A violation of any of these sections is a level**
18 **two violation under section 374.049, RSMo. The director of insurance**
19 **may also suspend or revoke the license or certificate of authority of**
20 **such person for any willful violation.**

21 5. **If the director believes that a person has engaged, is engaging,**
22 **or is about to engage in a violation of section 375.991 or a rule adopted**
23 **or order issued pursuant thereto, or that a person has materially aided,**
24 **is materially aiding, or is about to materially aid an act, practice,**
25 **omission, or course of business constituting a violation of section**
26 **375.991 or a rule adopted or order issued pursuant thereto, the director**
27 **may maintain a civil action for relief authorized under section 374.048,**
28 **RSMo. A violation of any of these sections is a level two violation**
29 **under section 374.049, RSMo.**

30 6. Nothing in this section shall be construed as prohibiting the
31 department of insurance from regulating unfair or fraudulent trade practices as
32 provided for in sections 375.930 to 375.948.

33 [5. In the event] 7. **If the director determines that a person regulated**
34 **under this chapter has conducted its business fraudulently with respect to**
35 **sections 375.991 to 375.994, or has as a matter of business practice abused its**
36 **rights under said sections, such conduct shall [be considered] constitute**
37 **either an unfair trade practice under the provisions of sections 375.930 to 375.948 or an**
38 **unfair claims settlement practice under the provisions of sections 375.1000 to**
39 **375.1018. [The director shall have the power and authority, pursuant to the**
40 **unfair trade practices act and the unfair claims settlement practices act to subject**

41 such persons to the monetary penalty or suspend or revoke such person's license
42 or certificate of authority, under such acts.]

375.1010. 1. [Whenever the director shall have reason to believe that any
2 insurer has been engaged or is engaging in this state in any improper claims
3 practice, and that a proceeding by him in respect thereto would be to the interest
4 of the public, he shall issue and serve upon such person or insurer a statement
5 of the charges in that respect and a notice of hearing thereon to be held at a time
6 and place fixed in the notice which shall not be less than twenty days after the
7 date of service thereof.

8 2. At the time and place fixed for such hearing, such insurer shall have
9 an opportunity to be heard to show cause why an order should not be made by the
10 director requiring such insurer to cease and desist from the acts, methods or
11 practices so complained of. Upon good cause shown, the director shall permit any
12 person to intervene, appear and be heard at such hearing by counsel or in
13 person. Nothing in sections 375.1000 to 375.1018 shall preclude the informal
14 disposition of any case by stipulation, consent order, or default, or by agreed
15 settlement where such settlement is in conformity with law.

16 3. Nothing contained in sections 375.1000 to 375.1018 shall require the
17 observance at any such hearing of formal rules of pleading or evidence.

18 4. Upon such hearing, the director may examine and cross-examine
19 witnesses, receive oral and documentary evidence, administer oaths, subpoena
20 witnesses and compel their attendance, and require the production of books,
21 papers, records, correspondence and all other written instruments or documents
22 which he deems relevant to the inquiry. The director, upon any such hearing,
23 shall cause to be made a record of all the evidence and all the proceedings had
24 at such hearing. In case of a refusal of any person to comply with any subpoena
25 issued hereunder or to testify with respect to any matter concerning which he
26 may be lawfully interrogated, the circuit court of Cole County or the county where
27 such party resides, or may be found, on application of the director, may issue an
28 order requiring such person to comply with such subpoena and to testify; and any
29 failure to obey any such order of the court may be punished by the court as a
30 contempt thereof.

31 5. Statements of charges, notices, orders, and other processes of the
32 director under sections 375.1000 to 375.1018 may be served by anyone duly
33 authorized by the director either in the manner provided by law for service of
34 process in civil actions, or by registering or certifying and mailing a copy thereof

35 to the person affected by such statement, notice, order, or other process at his or
36 its residence or principal office or place of business. The verified return by the
37 person so serving such statement, notice, order or other process, setting forth the
38 manner of such service, shall be proof of the same, and the return postcard
39 receipt for such statement, notice, order or other process, registered and mailed
40 as aforesaid, shall be proof of the service of the same.] **If the director**
41 **determines that an insurer has engaged, is engaging, or is about to**
42 **engage in a violation of sections 375.1000 to 375.1018 or a rule adopted**
43 **or order issued pursuant thereto, or that a person has materially aided,**
44 **is materially aiding, or is about to materially aid an act, practice,**
45 **omission, or course of business constituting a violation of sections**
46 **375.1000 to 375.1018 or a rule adopted or order issued pursuant thereto,**
47 **the director may issue such administrative orders as authorized under**
48 **section 374.046, RSMo. Each practice in violation of section 375.1005 is**
49 **a level two violation under section 374.049, RSMo. Each act as part of**
50 **a claims settlement practice does not constitute a separate violation**
51 **under section 374.049, RSMo. The director of insurance may also**
52 **suspend or revoke the license or certificate of authority of an insurer**
53 **for any willful violation.**

54 **2. If the director believes that an insurer has engaged, is**
55 **engaging, or is about to engage in a violation of sections 375.1000 to**
56 **375.1018 or a rule adopted or order issued pursuant thereto, or that a**
57 **person has materially aided, is materially aiding, or is about to**
58 **materially aid an act, practice, omission, or course of business**
59 **constituting a violation of sections 375.1000 to 375.1018 or a rule**
60 **adopted or order issued pursuant thereto, the director may maintain**
61 **a civil action for relief authorized under section 374.048, RSMo. Each**
62 **practice in violation of section 375.1005 is a level two violation under**
63 **section 374.049, RSMo. Each act as part of a claims settlement practice**
64 **does not constitute a separate violation under section 374.049, RSMo.**

375.1014. 1. [Any person, including any person who has been permitted
2 to intervene, who is aggrieved by a final order or decision of the director shall be
3 entitled to judicial review thereof.

4 2. The court shall make and enter upon the pleadings evidence and
5 proceedings set forth in the transcript a degree modifying, affirming or reversing
6 the order of the director, in whole or in part. To the extent that the order of the
7 director is affirmed, the court shall thereupon issue its own order commanding

8 obedience to the terms of such order of the director. If either party shall apply
9 to the court for leave to adduce additional evidence, and shall show to the
10 satisfaction of the court that such additional evidence is material and that there
11 were reasonable grounds for the failure to adduce such evidence in the proceeding
12 before the director, the court may order such additional evidence to be taken
13 before the director and to be adduced upon the hearing in such manner and upon
14 such terms and conditions as the court may deem proper. The director may
15 modify his findings of fact, or make new findings by reason of the additional
16 evidence so taken, and he shall file such modified or new findings which are
17 supported by evidence on the record and his recommendation, if any, for the
18 modification or setting aside of his original order, with the return of such
19 additional evidence.

20 3. An order issued by the director under section 375.1012 shall become
21 final:

22 (1) Upon the expiration of the time allowed for filing a petition for review
23 if no such petition has been duly filed within such time; except that the director
24 may thereafter modify or set aside his order to the extent provided in subsection
25 2 of section 375.1012; or

26 (2) Upon the final decision of the court if the court directs that the order
27 of the director be affirmed or the petition for review dismissed.

28 **4.] A final order issued by the director under sections 375.1000**
29 **to 375.1018 is subject to judicial review in accordance with the**
30 **provisions of chapter 536, RSMo, in the circuit court of Cole County.**

31 2. No order of the director under section 375.942 or order of a court to
32 enforce the same shall in any way relieve or absolve any person affected by such
33 order from any liability under any other laws of this state.

375.1016. [Any person who violates] **It is unlawful for any person to**
2 **violate any provision of** a cease and desist order of the director under section
3 375.1012, [while such order is in effect, may, after notice and hearing, and upon
4 order of the director, be subject to either or both of the following:

5 (1) A monetary penalty of not more than twenty-five thousand dollars for
6 each and every act or violation not to exceed an aggregate amount of two hundred
7 fifty thousand dollars pursuant to any such hearing; or

8 (2) Suspension or revocation of such person's license or certificate of
9 authority] **and the director may institute an action under sections**
10 **374.046 and 374.047, RSMo, as necessary to enforce any such order.**

375.1135. 1. [A reinsurance intermediary, insurer or reinsurer found by
2 the director, after a hearing conducted in accordance with chapter 536, RSMo, to
3 be in violation of any provisions of sections 375.1110 to 375.1140, shall:

4 (1) For each separate violation, pay a penalty in an amount not exceeding
5 five thousand dollars;

6 (2) Be subject to revocation or suspension of its license; and

7 (3)] **If the director determines that a reinsurance intermediary,
8 insurer, or reinsurer has engaged, is engaging, or is about to engage in
9 a violation of sections 375.1110 to 375.1140 or a rule adopted or order
10 issued pursuant thereto, or that a person has materially aided, is
11 materially aiding, or is about to materially aid an act, practice,
12 omission, or course of business constituting a violation of sections
13 375.1110 to 375.1140 or a rule adopted or order issued pursuant thereto,
14 the director may issue such administrative orders as authorized under
15 section 374.046, RSMo. A violation of any of these sections is a level
16 two violation under section 374.049, RSMo. The director of insurance
17 may also suspend or revoke the license or certificate of authority of a
18 reinsurance intermediary, insurer, or reinsurer for any willful
19 violation.**

20 **2. If the director believes that a reinsurance intermediary,
21 insurer, or reinsurer has engaged, is engaging, or is about to engage in
22 a violation of sections 375.1110 to 375.1140 or a rule adopted or order
23 issued pursuant thereto, or that a person has materially aided, is
24 materially aiding, or is about to materially aid an act, practice,
25 omission, or course of business constituting a violation of sections
26 375.1110 to 375.1140 or a rule adopted or order issued pursuant thereto,
27 the director may maintain a civil action for relief authorized under
28 section 374.048, RSMo. A violation of any of these sections is a level
29 two violation under section 374.049, RSMo.**

30 **3. In addition to any other relief authorized by sections 374.046
31 and 374.047, RSMo, if a violation was committed by the reinsurance
32 intermediary, such reinsurance intermediary shall make restitution to the
33 insurer, reinsurer, rehabilitator or liquidator of the insurer or reinsurer for the
34 net losses incurred by the insurer or reinsurer attributable to such violation.**

35 [2. The decision, determination or order of the director pursuant to
36 subsection 1 of this section shall be subject to judicial review pursuant to sections

37 536.100 to 536.140, RSMo.

38 3. Nothing contained in this section shall affect the right of the director
39 to impose any other penalties provided by law.]

40 4. Nothing contained in sections 375.1110 to 375.1140 is intended to or
41 shall in any manner limit or restrict the rights of policyholders, claimants,
42 creditors or other third parties or confer any rights to such persons.

375.1156. 1. Any officer, manager, director, trustee, owner, employee or
2 agent of any insurer, or any other persons with authority over or in charge of any
3 segment of the insurer's affairs, shall cooperate with the director or any receiver
4 in any proceeding under sections 375.1150 to 375.1246 or any investigation
5 preliminary to the proceeding. The term "person" as used in this section, shall
6 include any person who exercises control directly or indirectly over activities of
7 the insurer through any holding company or other affiliate of the insurer. "To
8 cooperate" shall include, but shall not be limited to, the following:

9 (a) To reply promptly in writing to any inquiry from the director
10 requesting such a reply; and

11 (b) To make available to the director any books, accounts, documents, or
12 other records or information or property of or pertaining to the insurer and in its
13 possession, custody or control.

14 2. [No] **It is unlawful for any person [shall] included in subsection**
15 **1 of this section to** obstruct or interfere with the director in the conduct of any
16 delinquency proceeding or any investigation preliminary or incidental thereto.

17 3. This section shall not be construed to abridge otherwise existing legal
18 rights, including the right to resist a petition for liquidation or other delinquency
19 proceedings, or other orders.

20 [4. Any person included within subsection 1 of this section who fails to
21 cooperate with the director, or any person who knowingly obstructs or interferes
22 with the director in the conduct of any delinquency proceeding or any
23 investigation preliminary or incidental thereto, or who knowingly violates any
24 order the director issued validly under sections 375.1150 to 375.1246 shall be
25 guilty of a class A misdemeanor, and, in addition thereto, after a hearing, shall
26 be subject to the imposition by the director of an administrative penalty not to
27 exceed ten thousand dollars for each occurrence or violation and shall be subject
28 further to the revocation or suspension of any insurance licenses issued by the
29 director. Moneys collected pursuant to the imposition of such administrative
30 penalties shall be transferred to the state treasurer and deposited to the general

31 revenue fund.

32 5.] 4. In any proceeding under sections 375.1150 to 375.1246, the director
33 and his deputies shall be responsible on their official bonds for the faithful
34 performance of their duties. If the court deems it desirable for the protection of
35 the assets, it may at any time require an additional bond from the director or his
36 deputies, and such bonds shall be paid for out of the assets of the insurer as a
37 cost of administration.

375.1160. 1. As used in this section:

2 (1) "Exceeded its powers" means one or more of the following conditions:

3 (a) The insurer has refused to permit examination of its books, papers,
4 accounts, records or affairs by the director, his deputy, employees or duly
5 commissioned examiners;

6 (b) A domestic insurer has unlawfully removed from this state or is unable
7 to produce books, papers, accounts or records necessary for an examination of the
8 insurer;

9 (c) The insurer has failed to promptly comply with the applicable financial
10 reporting statutes or rules and requests relating thereto;

11 (d) The insurer has neglected or refused to observe an order of the
12 director to make good, within the time prescribed by law, any prohibited
13 deficiency in its capital, capital stock or surplus;

14 (e) The insurer is continuing to transact insurance or write business after
15 its license has been revoked or suspended by the director;

16 (f) The insurer, by contract or otherwise, has unlawfully or has in
17 violation of an order of the director or has without first having obtained written
18 approval of the director if approval is required by law:

19 a. Totally reinsured its entire outstanding business, or

20 b. Merged or consolidated substantially its entire property or business
21 with another insurer;

22 (g) The insurer engaged in any transaction in which it is not authorized
23 to engage under the laws of this state;

24 (h) A domestic insurer has committed or engaged in, or is about to commit
25 or engage in, any act, practice or transaction that would subject it to delinquency
26 proceedings under sections 375.1150 to 375.1246; or

27 (i) The insurer refused to comply with a lawful order of the director;

28 (2) "Consent" means agreement to administrative supervision by the
29 insurer.

30 2. (1) An insurer may be subject to administrative supervision by the
31 director if upon examination or at any other time it appears in the director's
32 discretion that:

33 (a) The insurer's condition renders the continuance of its business
34 hazardous to the public or to its insureds;

35 (b) The insurer exceeded its powers granted under its certificate of
36 authority and applicable law;

37 (c) The insurer has failed to comply with the laws of this state relating to
38 insurance;

39 (d) The business of the insurer is being conducted fraudulently; or

40 (e) The insurer gives its consent.

41 (2) If the director determines that the conditions set forth in subdivision
42 (1) of this subsection exist, the director shall:

43 (a) Notify in writing the insurer of his determination;

44 (b) Furnish to the insurer a written list of his requirements to rescind his
45 determination; and

46 (c) Notify the insurer that it is under the supervision of the director and
47 that the director is applying and effectuating the provisions of this section.

48 (3) The notice of supervision under this subsection and any order issued
49 pursuant to this section shall be served upon the insurer in writing by registered
50 mail. The notice of supervision shall state the conduct, condition or ground upon
51 which the director bases his order.

52 (4) If placed under administrative supervision, the insurer shall have
53 sixty days, or another period of time as designated by the director, to comply with
54 the requirements of the director subject to the provisions of this section. In the
55 event of such insurer's failure to comply with such time periods, the director may
56 institute proceedings under section 375.1165 or 375.1175 to have a rehabilitator
57 or liquidator appointed, or to extend the period of supervision.

58 (5) If it is determined that none of the conditions giving rise to the
59 supervision exist, the director shall release the insurer from supervision.

60 3. (1) Except as set forth in this subsection, all proceedings, hearings,
61 notices, orders, correspondence, reports, records and other information in the
62 possession of the director or the department of insurance relating to the
63 supervision of any insurer are confidential except as provided by this section.

64 (2) Personnel of the department of insurance shall have access to these
65 proceedings, hearings, notices, orders, correspondence, reports, records or

66 information as permitted by the director.

67 (3) The director may open the proceedings or hearings or disclose the
68 notices, orders, correspondence, reports, records or information to a department,
69 agency or instrumentality of this or another state or the United States if the
70 director determines that the disclosure is necessary or proper for the enforcement
71 of the laws of this or another state of the United States.

72 (4) The director may open the proceedings or hearings or make public the
73 notices, orders, correspondence, reports, records or other information if the
74 director deems that it is in the best interest of the public or in the best interest
75 of the insurer, its insureds, creditors or the general public.

76 (5) This subsection does not apply to hearings, notices, correspondence,
77 reports, records or other information obtained upon the appointment of a receiver
78 for the insurer by a court of competent jurisdiction.

79 4. During the period of supervision, the director or his designated
80 appointee shall serve as the administrative supervisor. The director may provide
81 that the insurer shall not do any of the following things during the period of
82 supervision, without the prior approval of the director or the appointed
83 supervisor:

84 (1) Dispose of, convey or encumber any of its assets or its business in
85 force;

86 (2) Withdraw any of its bank accounts;

87 (3) Lend any of its funds;

88 (4) Invest any of its funds;

89 (5) Transfer any of its property;

90 (6) Incur any debt, obligation or liability;

91 (7) Merge or consolidate with another company;

92 (8) Approve new premiums or renew any policies;

93 (9) Enter into any new reinsurance contract or treaty;

94 (10) Terminate, surrender, forfeit, convert or lapse any insurance policy,
95 certificate or contract, except for nonpayment of premiums due;

96 (11) Write any new or renewal business;

97 (12) Release, pay or refund premium deposits, accrued cash or loan
98 values, unearned premiums, or other reserves on any insurance policy, certificate
99 or contract;

100 (13) Make any material change in management; or

101 (14) Increase salaries and benefits of officers or directors or the

102 preferential payment of bonuses, dividends or other payments deemed
103 preferential.

104 5. Any insurer subject to a supervision order under this section may seek
105 review pursuant to section 536.150, RSMo, of that order within thirty days of the
106 entry of the order of supervision. Such a request for a hearing shall not stay the
107 effect of the order.

108 6. During the period of supervision the insurer may contest an action
109 taken or proposed to be taken by the administrative supervisor specifying the
110 manner in which the action being complained of would not result in improving
111 the condition of the insurer. An insurer may request review pursuant to section
112 536.150, RSMo, of written denial of the insurer's request to reconsider pursuant
113 to this subsection.

114 7. If any person has violated any supervision order issued under this
115 section which as to him was still in effect, the director may [impose an
116 administrative penalty in an amount not to exceed ten thousand dollars for each
117 violation. Moneys collected pursuant to the imposition of such penalties shall be
118 transferred to the state treasurer and deposited to the general revenue fund.

119 8. The director or administrative supervisor may apply for, and any court
120 of general jurisdiction may grant, such restraining orders, preliminary and
121 permanent injunctions, and other orders as may be deemed necessary and proper
122 to enforce a supervision order.

123 **9.] initiate an action under section 375.1161.**

124 8. In the event that any person, subject to the provisions of sections
125 375.1150 to 375.1246, including those persons described in subsection 1 of section
126 375.1156, shall knowingly violate any valid order of the director issued under the
127 provisions of this section and, as a result of such violation, the net worth of the
128 insurer shall be reduced or the insurer shall suffer loss it would not otherwise
129 have suffered, said person shall become personally liable to the insurer for the
130 amount of any such reduction or loss. The director or administrative supervisor
131 is authorized **under subsection 1 of section 375.1161** to bring an action on
132 behalf of the insurer in any court of competent jurisdiction to recover the amount
133 of reduction or loss together with any costs.

134 **[10.] 9.** Nothing contained in sections 375.1150 to 375.1246 shall
135 preclude the director from initiating judicial proceedings to place an insurer in
136 conservation, rehabilitation or liquidation proceedings or other delinquency
137 proceedings, however designated under the laws of this state, regardless of

138 whether the director has previously initiated administrative supervision
139 proceedings under this section against the insurer.

140 [11.] 10. The director may adopt reasonable rules necessary for the
141 implementation of this section.

142 [12.] 11. Notwithstanding any other provision of law, the director may
143 meet with an administrative supervisor appointed under this section and with the
144 attorney or other representative of the administrative supervisor, without the
145 presence of any other person, at the time of any proceeding or during the
146 pendency of any proceeding held under authority of this section to carry out his
147 duties under this section or for the administrative supervisor to carry out his
148 duties under this section.

149 [13.] 12. There shall be no liability on the part of, and no cause of action
150 of any nature shall arise against, the director or the department of insurance or
151 its employees or agents for any action taken by them in the performance of their
152 powers and duties under this section.

375.1161. 1. If the director determines that a person has
2 engaged, is engaging, or is about to engage in a violation of sections
3 375.1150 to 375.1246 or a rule adopted or order issued pursuant thereto,
4 or that a person has materially aided, is materially aiding, or is about
5 to materially aid an act, practice, omission, or course of business
6 constituting a violation of sections 375.1150 to 375.1246 or a rule
7 adopted or order issued pursuant thereto, the director may issue such
8 administrative orders as authorized under section 374.046, RSMo. A
9 violation of any of these sections is a level four violation under section
10 374.049, RSMo. The director of insurance may also suspend or revoke
11 the license or certificate of authority of such person for any willful
12 violation.

13 2. If the director believes that a person has engaged, is engaging,
14 or is about to engage in a violation of sections 375.1150 to 375.1246 or
15 a rule adopted or order issued pursuant thereto, or that a person has
16 materially aided, is materially aiding, or is about to materially aid an
17 act, practice, omission, or course of business constituting a violation of
18 sections 375.1150 to 375.1246 or a rule adopted or order issued pursuant
19 thereto, the director may maintain a civil action for relief authorized
20 under section 374.048, RSMo. A violation of any of these sections is a
21 level four violation under section 374.049, RSMo.

375.1204. 1. [An agent, broker] **A producer**, premium finance company,
2 or any other person, other than the insured, responsible for the payment of a
3 premium, shall be obligated to pay any unpaid earned premium due the insurer
4 at the time of the declaration of insolvency as shown on the records of the
5 insurer. The liquidator shall also have the right to recover from such person any
6 part of an unearned premium that represents commission of such person. Credits
7 or setoffs or both shall not be allowed to [an agent, broker,] **a producer** or
8 premium finance company for any amounts advanced to the insurer by the [agent,
9 broker,] **producer** or premium finance company on behalf of, but in the absence
10 of a payment by the insured. An insured shall be obligated to pay any unpaid
11 earned premium due the insurer at the time of the declaration of insolvency, as
12 shown on the records of the insurer.

13 2. [Upon satisfactory evidence of a violation of this section, the director
14 may pursue either one or both of the following courses of action:

15 (1) Suspend or revoke or refuse to renew any licenses issued by the
16 department of insurance to such offending party or parties;

17 (2) Impose an administrative penalty of not more than one thousand
18 dollars for each and every act in violation of this section by said party or parties.
19 All amounts collected as a result of imposition of such administrative penalties
20 shall be paid to the state treasurer for deposit to the general revenue fund.

21 3. Before the director shall take any action as set forth in subsection 2 of
22 this section, he shall give written notice to the person, company, association or
23 exchange accused of violating the law, stating specifically the nature of the
24 alleged violation and fixing a time and place, at least ten days thereafter, when
25 a hearing on the matter shall be held. After such hearing, or upon failure of the
26 accused to appear at such hearing, the director, if he shall find such violation,
27 shall impose such of the penalties under subsection 2 of this section as he deems
28 advisable.

29 4. When the director shall take any action provided by subsection 2 of this
30 section, the party aggrieved may appeal said action to the court within thirty
31 days of the director's decision] **If the director determines that a person has**
32 **engaged, is engaging, or is about to engage in a violation of this section**
33 **or a rule adopted or order issued pursuant thereto, or that a person has**
34 **materially aided, is materially aiding, or is about to materially aid an**
35 **act, practice, omission, or course of business constituting a violation of**
36 **this section or a rule adopted or order issued pursuant thereto, the**

37 **director may issue such administrative orders as authorized under**
38 **section 374.046, RSMo. A violation of this section is a level one**
39 **violation under section 374.049, RSMo. The director of insurance may**
40 **also suspend, revoke, or refuse to renew any license issued by the**
41 **director to any offending person for any willful violation.**

42 **3. If the director believes that a person has engaged, is engaging,**
43 **or is about to engage in a violation of this section or a rule adopted or**
44 **order issued pursuant thereto, or that a person has materially aided,**
45 **is materially aiding, or is about to materially aid an act, practice,**
46 **omission, or course of business constituting a violation of this section**
47 **or a rule adopted or order issued pursuant thereto, the director may**
48 **maintain a civil action for relief authorized under section 374.048,**
49 **RSMo. A violation of this section is a level one violation under section**
50 **374.049, RSMo.**

375.1306. 1. An employer shall not use any genetic information or genetic
2 test results, as those terms are defined in subdivisions (3) and (4) of section
3 375.1300, of an employee or prospective employee to distinguish between,
4 discriminate against, or restrict any right or benefit otherwise due or available
5 to such employee or prospective employee. The requirements of this section shall
6 not prohibit:

7 (1) Underwriting in connection with individual or group life, disability
8 income or long-term care insurance;

9 (2) Any action required or permissible by law or regulation;

10 (3) Action taken with the written permission of an employee or
11 prospective employee or such person's authorized representative; or

12 (4) The use of genetic information when such information is directly
13 related to a person's ability to perform assigned job responsibilities.

14 2. [Any person who violates the provisions of this section shall be fined
15 not more than five hundred dollars for each violation of this section] **If the**
16 **director determines that a person has engaged, is engaging, or is about**
17 **to engage in a violation of this section or a rule adopted or order issued**
18 **pursuant thereto, or that a person has materially aided, is materially**
19 **aiding, or is about to materially aid an act, practice, omission, or**
20 **course of business constituting a violation of this section or a rule**
21 **adopted or order issued pursuant thereto, the director may issue such**
22 **administrative orders as authorized under section 374.046, RSMo. A**

23 **violation of any of these sections is a level two violation under section**
24 **374.049, RSMo.**

25 **3. If the director believes that a person has engaged, is engaging,**
26 **or is about to engage in a violation of this section or a rule adopted or**
27 **order issued pursuant thereto, or that a person has materially aided,**
28 **is materially aiding, or is about to materially aid an act, practice,**
29 **omission, or course of business constituting a violation of this section**
30 **or a rule adopted or order issued pursuant thereto, the director may**
31 **maintain a civil action for relief authorized under section 374.048,**
32 **RSMo. A violation of any of these sections is a level two violation**
33 **under section 374.049, RSMo.**

375.1309. 1. Any person who, in the ordinary course of business, practice
2 of a profession or rendering of a service, creates, stores, receives or furnishes
3 genetic information, as such term is defined in subdivision (3) of section
4 375.1300, shall hold such information as confidential medical records and shall
5 not disclose such genetic information except pursuant to written authorization of
6 the person to whom such information pertains or to that person's authorized
7 representative. The requirements of this section shall not apply to:

8 (1) Statistical data compiled without reference to the identity of an
9 individual;

10 (2) Health research conducted in accordance with the provisions of the
11 federal common rule protecting the rights and welfare of research participants (45
12 CFR 46 and 21 CFR 50 and 56), or to health research using medical archives or
13 databases in which the identity of individuals is protected from disclosure by
14 coding or encryption, or by removing all identities;

15 (3) The release of such information pursuant to legal or regulatory
16 process; or

17 (4) The release of such information for body identification.

18 2. [Any person who violates the provisions of this section shall be fined
19 not more than five hundred dollars.] **If the director determines that a**
20 **person has engaged, is engaging, or is about to engage in violation of**
21 **this section or a rule adopted or order issued pursuant thereto, or that**
22 **a person has materially aided, is materially aiding, or is about to**
23 **materially aid an act, practice, omission, or course of business**
24 **constituting a violation of this section or a rule adopted or order issued**
25 **pursuant thereto, the director may issue such administrative orders as**

26 **authorized under section 374.046, RSMo. A violation of any of these**
27 **sections is a level two violation under section 374.049, RSMo.**

28 **3. If the director believes that a person has engaged, is engaging,**
29 **or is about to engage in a violation of this section or a rule adopted or**
30 **order issued pursuant thereto, or that a person has materially aided,**
31 **is materially aiding, or is about to materially aid an act, practice,**
32 **omission, or course of business constituting a violation of this section**
33 **or a rule adopted or order issued pursuant thereto, the director may**
34 **maintain a civil action for relief authorized under section 374.048,**
35 **RSMo. A violation of any of these sections is a level two violation**
36 **under section 374.049, RSMo.**

376.309. 1. As used in this section, "separate account" means an account
2 established by an insurance company, into which any amounts paid to or held by
3 such company under applicable contracts are credited and the assets of which,
4 subject to the provisions of this section, may be invested in such investments as
5 shall be authorized by a resolution adopted by such company's board of
6 directors. The income, if any, and gains and losses, realized or unrealized, on
7 such account shall be credited to or charged against the amounts allocated to
8 such account without regard to other income, gains or losses of the company. If
9 and to the extent so provided under the applicable contracts, that portion of the
10 assets of any such separate account equal to the reserves and other contract
11 liabilities with respect to such account shall not be chargeable with liabilities
12 arising out of any other business the company may conduct.

13 2. Any domestic life insurance company may, after adoption of a
14 resolution by its board of directors, establish one or more separate accounts, and
15 may allocate to such account or accounts any amounts paid to or held by it which
16 are to be applied under the terms of an individual or group contract to provide
17 benefits payable in fixed or in variable dollar amounts or in both.

18 3. To the extent it deems necessary to comply with any applicable federal
19 or state act, the company may, with respect to any separate account or any
20 portion thereof, provide for the benefit of persons having beneficial interests
21 therein special voting and other rights and special procedures for the conduct of
22 the business and affairs of such separate account or portion thereof, including,
23 without limitation, special rights and procedures relating to investment policy,
24 investment advisory services, selection of public accountants, and selection of a
25 committee, the members of which need not be otherwise affiliated with the

26 company, to manage the business and affairs of such separate account or portion
27 thereof; and the corporate charter of such company shall be deemed amended to
28 authorize the company to do so. The provisions of this section shall not affect
29 existing laws pertaining to the voting rights of such company's policyholders.

30 4. The amounts allocated to any separate account and the accumulations
31 thereon may be invested and reinvested without regard to any requirements or
32 limitations prescribed by the laws of this state governing the investments of life
33 insurance companies, and the investments in such separate account or accounts
34 shall not be taken into account in applying the investment limitations, including
35 but not limited to quantitative restrictions, otherwise applicable to the
36 investments of the company, except that to the extent that the company's reserve
37 liability with regard to benefits guaranteed as to principal amount and duration,
38 and funds guaranteed as to principal amount or stated rate of interest, is
39 maintained in any separate account, a portion of the assets of such separate
40 account at least equal to such reserve liability shall be, except as the director of
41 insurance might otherwise approve, invested in accordance with the laws of this
42 state governing the general investment account of any company. As used herein,
43 the expression "general investment account" shall mean all of the funds, assets
44 and investments of the company which are not allocated in a separate
45 account. The provisions of section 376.170 relating to deposits for registered
46 policies shall not be applicable to funds and investments allocated to separate
47 accounts. No investment in the separate account or in the general investment
48 account of a life insurance company shall be transferred by sale, exchange,
49 substitution or otherwise from one account to another unless, in case of a transfer
50 into a separate account, the transfer is made solely to establish the account or to
51 support the operation of the contracts with respect to the separate account to
52 which the transfer is made or unless the transfer, whether into or from a separate
53 account, is made by a transfer of cash, or by a transfer of other assets having a
54 readily determinable market value, provided that such transfer of other assets is
55 approved by the director of insurance and is for assets of equivalent value. Such
56 transfer shall be deemed approved to the extent the assets of a separate account
57 so transferred have been paid to or are being held by the company in connection
58 with a pension, retirement or profit-sharing plan subject to the provisions of the
59 Internal Revenue Code, as amended, and the Employee Retirement Income
60 Security Act of 1974, as amended. The director of insurance may withdraw such
61 deemed approval by providing written notice to the company that its financial

62 condition or past practices require such withdrawal. The director of insurance
63 may approve other transfers among such accounts if the director concludes that
64 such transfers would be equitable.

65 5. Unless otherwise approved by the director of insurance, assets allocated
66 to a separate account shall be valued at their market value on the date of
67 valuation, or if there is no readily available market, then as provided under the
68 terms of the contract or the rules or other written agreement applicable to such
69 separate account; provided, that the portion of the assets of such separate account
70 at least equal to the company's reserve liability with regard to the guaranteed
71 benefits and funds referred to in subsection 4 of this section, if any, shall be
72 valued in accordance with the rules otherwise applicable to the company's assets.

73 6. The director of insurance shall have the sole and exclusive **state**
74 authority to regulate the issuance and **authority to regulate the** sale of
75 contracts under which amounts are to be allocated to one or more separate
76 accounts as provided herein, and to issue such reasonable rules, regulations and
77 licensing requirements as [he] **the director** shall deem necessary to carry out
78 the purposes and provisions of this section; and [such contracts,] the companies
79 [which] **that** issue [them and the agents or other persons who sell them] **such**
80 **contracts** shall not be subject to [sections 409.101 to 409.419, RSMo, or
81 amendments thereto, nor to the jurisdiction of the] **registration with the**
82 **commissioner of securities. The director may, subject to the provisions of**
83 **section 374.185, RSMo, consult and cooperate with the commissioner of**
84 **securities in investigations arising from the offer and sale of contracts**
85 **regulated under this section and may request assistance from the**
86 **commissioner of securities in any proceeding arising from the offer and**
87 **sale of any such contracts.**

88 7. No domestic life insurance company, and no other life insurance
89 company admitted to transact business in this state, shall be authorized to
90 deliver within this state any contract under which amounts are to be allocated to
91 one or more separate accounts as provided herein until said company has
92 satisfied the director of insurance that its condition or methods of operation in
93 connection with the issuance of such contracts will not render its operation
94 hazardous to the public or its policyholders in this state. In determining the
95 qualifications of a company requesting authority to deliver such contracts within
96 this state, the director of insurance shall consider, among other things:

97 (1) The history and financial condition of the company;

98 (2) The character, responsibility and general fitness of the officers and
99 directors of the company; and

100 (3) In the case of a company other than a domestic company, whether the
101 statutes and regulations of the jurisdiction of its incorporation provide a degree
102 of protection to policyholders and the public which is substantially equal to that
103 provided by this section and the rules and regulations issued thereunder.

104 8. An authorized life insurance company, whether domestic, foreign or
105 alien, which issues contracts under which amounts are to be allocated to one or
106 more separate accounts as provided herein, and which is a subsidiary of or
107 affiliated through common management or ownership with another life insurance
108 company authorized to do business in this state, may be deemed to have met the
109 provisions of subsection 7 of this section if either it or the parent or affiliated
110 company meets the requirements thereof.

111 9. If the contract provides for payment of benefits in variable amounts, it
112 shall contain a statement of the essential features of the procedure to be followed
113 by the company in determining the dollar amount of such variable benefits. Any
114 such contract, including a group contract, and any certificate issued thereunder,
115 shall state that such dollar amount may decrease or increase and shall contain
116 on its first page a statement that the benefits thereunder are on a variable basis.

117 10. Except as otherwise provided in this section, all pertinent provisions
118 of the insurance laws of this state shall apply to separate accounts and contracts
119 relating thereto.

**376.435. 1. As such terms are defined in section 376.1350, a
2 health carrier providing a group health benefit plan or plans to an
3 employer who meets the requirements specified in subsection 2 of this
4 section shall, upon request by the employer or the employer's producer
5 of record, provide a report of the total dollar amount and total number
6 of claims paid under the plan or plans for each of the prior three years
7 or for each year coverage was in place if less than three years at the
8 time of the request. In the case of an employer with multiple plans, the
9 total dollar amounts shall be aggregated into one report. The report
10 shall be provided within thirty days of the request. The information
11 provided to the employer or the employer's producer of record shall be
12 furnished in a manner that does not individually identify any employee
13 or other person covered by the health benefit plan and shall comply
14 with all applicable federal and state privacy laws regarding the**

15 **disclosure of health records.**

16 **2. Effective August 28, 2006, for purposes of subsection 1 of this**
17 **section, an employer is one who:**

18 **(1) Employs at least fifty-one employees either at the time of the**
19 **request or at the start of the reporting period; and**

20 **(2) Has been insured continuously with the health carrier or a**
21 **carrier affiliated with the health carrier for at least the preceding**
22 **twenty-two months.**

23 **3. Effective January 1, 2008, and thereafter, the director of**
24 **insurance may establish by rule the minimum number of eligible**
25 **employees established under subdivision (1) of subsection 2 of this**
26 **section. The number shall not be equal to or less than the maximum**
27 **number of employees allowed for a "small employer" as defined in**
28 **section 379.930, RSMo. Any rule or portion of a rule, as that term is**
29 **defined in section 536.010, RSMo, that is created under the authority**
30 **delegated in this section shall become effective only if it complies with**
31 **and is subject to all of the provisions of chapter 536, RSMo, and, if**
32 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo,**
33 **are nonseverable and if any of the powers vested with the general**
34 **assembly pursuant to chapter 536, RSMo, to review, to delay the**
35 **effective date, or to disapprove and annul a rule are subsequently held**
36 **unconstitutional, then the grant of rulemaking authority and any rule**
37 **proposed or adopted after January 1, 2008, shall be invalid and void.**

376.889. [In addition to any other applicable penalties, the director may
2 require issuers violating any provision of sections 376.850 to 376.890 or
3 regulations promulgated pursuant to sections 376.850 to 376.890 to cease
4 marketing any Medicare supplement policy or certificate in this state which is
5 related directly or indirectly to a violation, or may require such issuer to take
6 such actions as are necessary to comply with the provisions of sections 376.850
7 to 376.890, or both] 1. **If the director determines that a person has**
8 **engaged, is engaging, or is about to engage in a violation of sections**
9 **376.850 to 376.890 or a rule adopted or order issued pursuant thereto,**
10 **or that a person has materially aided, is materially aiding, or is about**
11 **to materially aid an act, practice, omission, or course of business**
12 **constituting a violation of sections 376.850 to 376.890 or a rule adopted**
13 **or order issued pursuant thereto, the director may issue such**
14 **administrative orders as authorized under section 374.046, RSMo. A**

15 violation of any of these sections is a level two violation under section
16 374.049, RSMo.

17 2. If the director believes that a person has engaged, is engaging,
18 or is about to engage in a violation of sections 376.850 to 376.890 or a
19 rule adopted or order issued pursuant thereto, or that a person has
20 materially aided, is materially aiding, or is about to materially aid an
21 act, practice, omission, or course of business constituting a violation of
22 sections 376.850 to 376.890 or a rule adopted or order issued pursuant
23 thereto, the director may maintain a civil action for relief authorized
24 under section 374.048, RSMo. A violation of any of these sections is a
25 level two violation under section 374.049, RSMo.

376.1094. 1. The director shall suspend or revoke the certificate of
2 authority of an administrator [shall be suspended or revoked] if the director finds
3 that the administrator:

4 (1) Is in an unsound financial condition;

5 (2) Is using such methods or practices in the conduct of its business so as
6 to render its further transaction of business in this state hazardous or injurious
7 to insured persons or the public; or

8 (3) Has failed to satisfy any judgment rendered against it in this state
9 within sixty days after the judgment has become final.

10 2. The director may, in his discretion, suspend or revoke the certificate of
11 authority of an administrator if the director finds that the administrator or any
12 of its officers, directors or any individual responsible for the conduct of its affairs
13 as described in subdivision (3) of subsection 2 of section 376.1092:

14 (1) Has violated any lawful rule or order of the director or any provision
15 of the insurance laws of this state;

16 (2) Has refused to be examined or to produce its accounts, records and
17 files for examination, or if any of its officers has refused to give information with
18 respect to its affairs or has refused to perform any other legal obligation as to
19 such examination, when required by the director;

20 (3) Has, without just cause, refused to pay proper claims or perform
21 services arising under its contracts or has, without just cause, caused covered
22 individuals to accept less than the amount due them or caused covered
23 individuals to employ attorneys or bring suit against the administrator to secure
24 full payment or settlement of such claims;

25 (4) Is affiliated with or under the same general management or

26 interlocking directorate or ownership as another administrator or insurer which
27 unlawfully transacts business in this state without having a certificate of
28 authority;

29 (5) At any time fails to meet any qualification for which issuance of the
30 certificate could have been refused had such failure then existed and been known
31 to the department;

32 (6) Has been convicted of, or has entered a plea of guilty or nolo
33 contendere to, a felony without regard to whether adjudication was withheld;

34 (7) Is not competent, trustworthy, financially responsible or of good
35 personal and business reputation, has had an insurance or administrator license
36 denied for cause by any state or been subject to any form of administrative, civil
37 or criminal action by any federal or state agency or court resulting in some form
38 of discipline or sanction; or

39 (8) Is under suspension or revocation in another state.

40 3. The director may, in his discretion and without advance notice or
41 hearing thereon, immediately suspend the certificate of any administrator if the
42 director finds that one or more of the following circumstances exist:

43 (1) The administrator is insolvent or impaired;

44 (2) A proceeding for receivership, conservatorship, rehabilitation, or other
45 delinquency proceeding regarding the administrator has been commenced in any
46 state;

47 (3) The financial condition or business practices of the administrator
48 otherwise poses an imminent threat to the public health, safety or welfare of the
49 residents of this state.

50 4. [If the director finds that one or more grounds exist for the suspension
51 or revocation of a certificate of authority issued under sections 376.1075 to
52 376.1095, the director may, in lieu of such suspension or revocation, bring a civil
53 action against the administrator in a court of competent jurisdiction. The court
54 may impose a fine upon the administrator of not more than fifty thousand dollars,
55 such fine to be payable to the Missouri state school fund] **If the director**
56 **determines that a person has engaged, is engaging, or is about to**
57 **engage in a violation of sections 376.1075 to 376.1095 or a rule adopted**
58 **or order issued pursuant thereto, or that a person has materially aided,**
59 **is materially aiding, or is about to materially aid an act, practice,**
60 **omission, or course of business constituting a violation of sections**
61 **376.1075 to 376.1095 or a rule adopted or order issued pursuant thereto,**

62 the director may issue such administrative orders as authorized under
63 section 374.046, RSMo. A violation of any of these sections is a level
64 three violation under section 374.049, RSMo.

65 5. If the director believes that a person has engaged, is engaging,
66 or is about to engage in a violation of sections 376.1075 to 376.1095 or
67 a rule adopted or order issued pursuant thereto, or that a person has
68 materially aided, is materially aiding, or is about to materially aid an
69 act, practice, omission, or course of business constituting a violation of
70 sections 376.1075 to 376.1095 or a rule adopted or order issued pursuant
71 thereto, the director may maintain a civil action for relief authorized
72 under section 374.048, RSMo. A violation of any of these sections is a
73 level three violation under section 374.049, RSMo.

379.361. 1. [The director may, if he finds that any insurer or filing
2 organization has violated any provision of section 379.017 and sections 379.316
3 to 379.361, impose a penalty of not more than five hundred dollars for each
4 violation, but if he finds the violation to be willful, he may impose a penalty of
5 not more than five thousand dollars for each violation. These penalties may be
6 in addition to any other penalty provided by law.

7 2. The director may suspend the license of any rating organization or
8 insurer which fails to comply with an order of the director within the time limited
9 by such order, or any extension thereof which the director may grant. The
10 director shall not suspend the license of any rating organization or insurer for
11 failure to comply with an order until the time prescribed for an appeal therefrom
12 has expired or if an appeal has been taken, until the order has been
13 affirmed. The director may determine when a suspension of license shall become
14 effective and it shall remain in effect for the period fixed by him, unless he
15 modifies or rescinds such suspension or until the order upon which such
16 suspension is based is modified, rescinded or reversed.

17 3. No penalty shall be imposed or no license shall be suspended or
18 revoked except upon a written order of the director, stating his findings, made
19 after a hearing held upon not less than ten days' written notice to such person or
20 organization specifying the alleged violation] **If the director determines that**
21 **any insurer or filing organization has engaged, is engaging, or is about**
22 **to engage in a violation of section 379.017 and sections 379.316 to**
23 **379.361 or a rule adopted or order issued pursuant thereto, or that a**
24 **person has materially aided, is materially aiding, or is about to**

25 materially aid an act, practice, omission, or course of business
26 constituting a violation of section 379.017 and sections 379.316 to
27 379.361 or a rule adopted or order issued pursuant thereto, the director
28 may issue such administrative orders as authorized under section
29 374.046, RSMo. A violation of any of these sections is a level two
30 violation under section 374.049, RSMo. The practice of using a rate not
31 in effect under section 379.321, if caused by a single act or omission by
32 the insurer or filing organization, is a level two violation under section
33 374.049, RSMo. Each act as part of a rating violation does not
34 constitute a separate violation under section 374.049, RSMo. The
35 director of insurance may also suspend or revoke the license or
36 certificate of authority of an insurer or filing company for any willful
37 violation.

38 2. If the director believes that a person has engaged, is engaging,
39 or is about to engage in a violation of section 379.017 and sections
40 379.316 to 379.361 or a rule adopted or order issued pursuant thereto,
41 or that a person has materially aided, is materially aiding, or is about
42 to materially aid an act, practice, omission, or course of business
43 constituting a violation of section 379.017 and sections 379.316 to
44 379.361 or a rule adopted or order issued pursuant thereto, the director
45 may maintain a civil action for relief authorized under section 374.048,
46 RSMo. A violation of any of these sections is a level two violation
47 under section 374.049, RSMo. The practice of using a rate not in effect
48 under section 379.321, if caused by a single act or omission by the
49 insurer or filing organization, is a level two violation under section
50 374.049, RSMo. Each act as part of a rating violation does not
51 constitute a separate violation under section 374.049, RSMo.

379.510. [Any person or organization who willfully violates a final order
2 of the director under sections 379.420 to 379.510 shall be deemed guilty of a
3 misdemeanor and shall upon conviction thereof be punished by a fine not to
4 exceed five hundred dollars for such violation] 1. If the director determines
5 that any person has violated a final order of the director under sections
6 379.420 to 379.510, the director may issue such administrative orders as
7 authorized under section 374.046, RSMo. A violation of any of these
8 sections is a level two violation under section 374.049, RSMo.

9 2. If the director believes that a person has violated a final order
10 of the director under sections 379.420 to 379.510, the director may

11 **maintain a civil action for relief authorized under section 374.048,**
12 **RSMo. A violation of any of these sections is a level two violation**
13 **under section 374.049, RSMo.**

379.790. 1. **It is unlawful for** any attorney [who shall] **to** exchange any
2 contracts of indemnity of the kind and character specified in sections 379.650 to
3 379.790, or directly or indirectly solicit or negotiate any applications for same
4 without first complying with the foregoing provisions[, shall be deemed guilty of
5 a misdemeanor, and upon conviction thereof shall be subject to a fine of not less
6 than one hundred dollars nor more than one thousand dollars;
7 provided]. However, [that] the director of insurance may, in his discretion and
8 on such terms as he may prescribe, issue a permit for organization purposes, the
9 permit to continue in force or be canceled at the pleasure of the director of
10 insurance.

11 **2. If the director determines that a person has engaged, is**
12 **engaging, or is about to engage in a violation of this section or a rule**
13 **adopted or order issued pursuant thereto, or that a person has**
14 **materially aided, is materially aiding, or is about to materially aid an**
15 **act, practice, omission, or course of business constituting a violation of**
16 **this section or a rule adopted or order issued pursuant thereto, the**
17 **director may issue such administrative orders as authorized under**
18 **section 374.046, RSMo. A violation of this section is a level one**
19 **violation under section 374.049, RSMo.**

20 **3. If the director believes that a person has engaged, is engaging,**
21 **or is about to engage in a violation of this section or a rule adopted or**
22 **order issued pursuant thereto, or that a person has materially aided,**
23 **is materially aiding, or is about to materially aid an act, practice,**
24 **omission, or course of business constituting a violation of this section**
25 **or a rule adopted or order issued pursuant thereto, the director may**
26 **maintain a civil action for relief authorized under section 374.048,**
27 **RSMo. A violation of this section is a level one violation under section**
28 **374.049, RSMo.**

380.391. [No] 1. **It is unlawful for any** officer, director, member, agent
2 or employee of any company operating under the provisions of sections 380.201
3 to [380.591 shall,] **380.611 to** directly or indirectly, use or employ, or permit
4 others to use or employ, any of the money, funds or securities of the company for
5 private profit or gain[, and any such use shall be deemed a felony, punishable,

6 upon conviction, by imprisonment by the department of corrections and human
7 resources for not less than two years nor more than five years for each offense].

8 **2. Any person who willfully engages in any act, practice,**
9 **omission, or course of business in violation of this section is guilty of**
10 **a class D felony.**

11 **3. The director may refer such evidence as is available**
12 **concerning violations of this section to the proper prosecuting**
13 **attorney, who with or without a criminal reference, or the attorney**
14 **general under section 27.030, RSMo, may institute the appropriate**
15 **criminal proceedings.**

16 **4. Nothing in this section shall limit the power of the state to**
17 **punish any person for any conduct that constitutes a crime in any other**
18 **state statute.**

380.571. 1. [The director may issue cease and desist orders whenever it
2 appears to him upon competent and substantial evidence that any company
3 operating under the provisions of sections 380.201 to 380.591 is acting in
4 violation of those laws or any other applicable laws or any rule or regulation
5 promulgated by the director pursuant thereto. Before any cease and desist order
6 shall be issued, a copy of the proposed order together with an order to show cause
7 why such cease and desist order should not be issued shall be served either
8 personally or by certified mail on the company named therein.

9 2. Upon issuing any order to show cause, the director shall notify the
10 company named therein that it is entitled to a public hearing before the director
11 if a request for a hearing is made in writing to the director within fifteen days
12 from the day of the service of the order to show cause why the cease and desist
13 order should not be issued. The cease and desist order shall be issued fifteen
14 days after the service of the order to show cause if no request for a public hearing
15 is made as above provided.

16 3. Upon receipt of a request for a hearing, the director shall set a time
17 and place for the hearing which shall not be less than ten days or more than
18 fifteen days from the receipt of the request or as otherwise agreed upon by the
19 parties. Notice of the time and place shall be given by the director not less than
20 five days before the hearing.

21 4. At the hearing the company may be represented by counsel and shall
22 be entitled to be advised of the nature and source of any adverse evidence
23 procured by the director, and shall be given the opportunity to submit any

24 relevant written or oral evidence in its behalf to show cause why the cease and
25 desist order should not be issued.

26 5. At the hearing the director shall have such powers as are conferred
27 upon him by the provisions of section 374.190, RSMo.

28 6. At the conclusion of the hearing, or within ten days thereafter, the
29 director shall issue the cease and desist order as proposed or as subsequently
30 modified, or notify the company that no order will be issued.

31 7. The circuit court of Cole County shall have jurisdiction to review any
32 cease and desist order of the director under the provisions of sections 536.100 to
33 536.150, RSMo; and, if any company against whom an order is issued fails to
34 request judicial review, or if, after judicial review, the director's cease and desist
35 order is upheld, the order shall become final.

36 8. If any company willfully violates any provision of any cease and desist
37 order of the director after it becomes final, it may be penalized by the director by
38 a fine of not more than one thousand dollars.

39 9. The director of insurance may in addition to a monetary fine, suspend
40 or revoke the certificate of authority of any company violating a cease and desist
41 order] **If the director determines that any person has engaged, is**
42 **engaging, or is about to engage in a violation of sections 380.201 to**
43 **380.611 or a rule adopted or order issued pursuant thereto, or that a**
44 **person has materially aided, is materially aiding, or is about to**
45 **materially aid an act, practice, omission, or course of business**
46 **constituting a violation of sections 380.201 to 380.611 or a rule adopted**
47 **or order issued pursuant thereto, the director may issue such**
48 **administrative orders as authorized under section 374.046, RSMo. A**
49 **violation of any of these sections is a level two violation under section**
50 **374.049, RSMo, except a violation of section 380.391 is a level four**
51 **violation under section 374.049, RSMo. The director of insurance may**
52 **also suspend or revoke the certificate of authority of such person for**
53 **any willful violation.**

54 2. **If the director believes that a person has engaged, is engaging,**
55 **or is about to engage in a violation of sections 380.201 to 380.611 or a**
56 **rule adopted or order issued pursuant thereto, or that a person has**
57 **materially aided, is materially aiding, or is about to materially aid an**
58 **act, practice, omission, or course of business constituting a violation of**
59 **sections 380.201 to 380.611 or a rule adopted or order issued pursuant**

60 thereto, the director may maintain a civil action for relief authorized
61 under section 374.048, RSMo. A violation of any of these sections is a
62 level two violation under section 374.049, RSMo, except a violation of
63 section 380.391 is a level four violation under section 374.049, RSMo.

384.071. 1. If the director determines that a person has engaged,
2 is engaging, or is about to engage in a violation of sections 384.011 to
3 384.071 or a rule adopted or order issued pursuant thereto, or that a
4 person has materially aided, is materially aiding, or is about to
5 materially aid an act, practice, omission, or course of business
6 constituting a violation of 384.011 to 384.071 or a rule adopted or order
7 issued pursuant thereto, the director may issue such administrative
8 orders as authorized under section 374.046, RSMo. A violation of any
9 of these sections is a level three violation under section 374.049, RSMo.

10 2. If the director believes that a person has engaged, is engaging,
11 or is about to engage in a violation of sections 384.011 to 384.071 or a
12 rule adopted or order issued pursuant thereto, or that a person has
13 materially aided, is materially aiding, or is about to materially aid an
14 act, practice, omission, or course of business constituting a violation of
15 sections 384.011 to 384.071 or a rule adopted or order issued pursuant
16 thereto, the director may maintain a civil action for relief authorized
17 under section 374.048, RSMo. A violation of any of these sections is a
18 level three violation under section 374.049, RSMo.

19 3. Any surplus lines licensee who in this state represents or aids a
20 nonadmitted insurer in violation of the provisions of sections 384.011 to 384.071
21 may be found guilty of a **class B** misdemeanor and subject to a fine not in excess
22 of one thousand dollars.

23 [2. In addition to any other penalty provided for herein or otherwise
24 provided by law, including any suspension, revocation or refusal to renew a
25 license, any person, firm, association or corporation violating any provision of
26 sections 384.011 to 384.071 shall be liable to a penalty not exceeding one
27 thousand dollars for the first offense, and not exceeding two thousand dollars for
28 each succeeding offense.

29 3.] 4. The above penalties are not exclusive remedies. [Penalties may
30 also be assessed under sections 375.930 to 375.948, RSMo.]

385.200. As used in sections 385.200 to 385.212, the following
2 terms mean:

3 (1) "Administrator", the person other than a provider who is
4 responsible for the administration of the service contracts or the
5 service contracts plan or for any filings required by sections 385.200 to
6 385.212;

7 (2) "Consumer", a natural person who buys other than for
8 purposes of resale any tangible personal property that is distributed in
9 commerce and that is normally used for personal, family, or household
10 purposes and not for business or research purposes;

11 (3) "Dealers", any motor vehicle dealer or boat dealer licensed or
12 required to be licensed under the provisions of sections 301.550 to
13 301.573, RSMo;

14 (4) "Director", the director of the department of insurance;

15 (5) "Maintenance agreement", a contract of limited duration that
16 provides for scheduled maintenance only;

17 (6) "Manufacturer", any of the following:

18 (a) A person who manufactures or produces the property and
19 sells the property under the person's own name or label;

20 (b) A subsidiary of the person who manufactures or produces
21 the property;

22 (c) A person who owns one hundred percent of the entity that
23 manufactures or produces the property;

24 (d) A person that does not manufacture or produce the property,
25 but the property is sold under its trade name label;

26 (e) A person who manufactures or produces the property and the
27 property is sold under the trade name or label of another person;

28 (f) A person who does not manufacture or produce the property
29 but, under a written contract, licenses the use of its trade name or label
30 to another person who sells the property under the licensor's trade
31 name or label;

32 (7) "Mechanical breakdown insurance", a policy, contract, or
33 agreement issued by an authorized insurer who provides for the repair,
34 replacement, or maintenance of a motor vehicle or indemnification for
35 repair, replacement, or service, for the operational or structural failure
36 of a motor vehicle due to a defect in materials or workmanship or to
37 normal wear and tear;

38 (8) "Motor vehicle extended service contract" or "service
39 contract", a contract or agreement for a separately stated consideration

40 or for a specific duration to perform the repair, replacement, or
41 maintenance of a motor vehicle or indemnification for repair,
42 replacement, or maintenance, for the operational or structural failure
43 due to a defect in materials, workmanship, or normal wear and tear,
44 with or without additional provision for incidental payment of
45 indemnity under limited circumstances, including but not limited to
46 towing, rental, and emergency road service, but does not include
47 mechanical breakdown insurance or maintenance agreements;

48 (9) "Non-original manufacturer's parts", replacement parts not
49 made for or by the original manufacturer of the property, commonly
50 referred to as "after market parts";

51 (10) "Person", an individual, partnership, corporation,
52 incorporated or unincorporated association, joint stock company,
53 reciprocal, syndicate, or any similar entity or combination of entities
54 acting in concert;

55 (11) "Premium", the consideration paid to an insurer for a
56 reimbursement insurance policy;

57 (12) "Provider", a person who is contractually obligated to the
58 service contract holder under the terms of a motor vehicle extended
59 service contract;

60 (13) "Provider fee", the consideration paid for a motor vehicle
61 extended service contract by a service contract holder;

62 (14) "Reimbursement insurance policy", a policy of insurance
63 issued to a provider and under which the insurer agrees, for the benefit
64 of the motor vehicle extended service contract holders, to discharge all
65 of the obligations and liabilities of the provider under the terms of the
66 motor vehicle extended service contracts in the event of
67 nonperformance by the provider. All obligations and liabilities include,
68 but are not limited to, failure of the provider to perform under the
69 motor vehicle extended service contract and the return of the unearned
70 provider fee in the event of the provider's unwillingness or inability to
71 reimburse the unearned provider fee in the event of termination of a
72 motor vehicle extended service contract;

73 (15) "Service contract holder" or "contract holder", a person who
74 is the purchaser or holder of a motor vehicle extended service contract;

75 (16) "Warranty", a warranty made solely by the manufacturer,
76 importer, or seller of property or services without charge, that is not

77 negotiated or separated from the sale of the product and is incidental
78 to the sale of the product, that guarantees indemnity for defective
79 parts, mechanical or electrical breakdown, labor, or other remedial
80 measures, such as repair or replacement of the property or repetition
81 of services.

385.201. 1. Motor vehicle extended service contracts shall not be
2 issued, sold, or offered for sale in this state unless the provider or its
3 designee has:

4 (1) Provided a receipt for the purchase of the motor vehicle
5 extended service contract to the contract holder at the date of
6 purchase;

7 (2) Provided a copy of the motor vehicle extended service
8 contract to the service contract holder within a reasonable period of
9 time from the date of purchase; and

10 (3) Complied with the provisions of sections 385.200 to 385.212.

11 2. All providers of motor vehicle extended service contracts sold
12 in this state shall file a registration with the director on a form, at a fee
13 and at a frequency prescribed by the director.

14 3. In order to assure the faithful performance of a provider's
15 obligations to its contract holders, each provider who is contractually
16 obligated to provide service under a motor vehicle extended service
17 contract shall:

18 (1) Insure all motor vehicle extended service contracts under a
19 reimbursement insurance policy issued by an insurer authorized to
20 transact insurance in this state; or

21 (2) (a) Maintain a funded reserve account for its obligation
22 under its contracts issued and outstanding in this state. The reserves
23 shall not be less than forty percent of gross consideration received, less
24 claims paid, on the sale of the motor vehicle extended service contract
25 for all in-force contracts. The reserve account shall be subject to
26 examination and review by the director; and

27 (b) Place in trust with the director a financial security deposit,
28 having a value of not less than five percent of the gross consideration
29 received, less claims paid, on the sale of the motor vehicle extended
30 service contract for all motor vehicle extended service contracts issued
31 and in force, but not less than twenty-five thousand dollars, consisting
32 of one of the following:

- 33 a. A surety bond issued by an authorized surety;
- 34 b. Securities of the type eligible for deposit by authorized
- 35 insurers in this state;
- 36 c. Cash;
- 37 d. A letter of credit issued by a qualified financial institution; or
- 38 e. Another form of security prescribed by regulations issued by
- 39 the director; or

40 (3) (a) Maintain a net worth of one hundred million dollars; and

41 (b) Upon request, provide the director with a copy of the

42 provider's or, if the provider's financial statements are consolidated

43 with those of its parent company, the provider's parent company's most

44 recent Form 10-K filed with the Securities and Exchange Commission

45 (SEC) within the last calendar year, or if the company does not file with

46 the SEC, a copy of the company's audited financial statements, which

47 shows a net worth of the provider or its parent company of at least one

48 hundred million dollars. If the provider's parent company's Form 10-K

49 or audited financial statements are filed to meet the provider's

50 financial stability requirement, then the parent company shall agree to

51 guarantee the obligations of the obligor relating to motor vehicle

52 extended service contracts sold by the provider in this state.

53 4. Provider fees collected on motor vehicle extended service

54 contracts shall not be subject to premium taxes. Premiums for

55 reimbursement insurance policies shall be subject to applicable

56 premium taxes.

57 5. Except for the registration requirement in subsection 2 of this

58 section, persons marketing, selling, or offering to sell motor vehicle

59 extended service contracts for providers that comply with sections

60 385.200 to 385.212 are exempt from this state's licensing requirements.

61 6. Providers complying with the provisions of sections 385.200 to

62 385.212 are not required to comply with other provisions of chapter 374

63 or 375, or any other provisions governing insurance companies, except

64 as specifically provided.

 385.203. Reimbursement insurance policies insuring motor

2 vehicle extended service contracts issued, sold, or offered for sale in

3 this state shall conspicuously state that, upon failure of the provider to

4 perform under the contract, such as failure to return the unearned

5 provider fee, the insurer that issued the policy shall pay on behalf of

6 the provider any sums the provider is legally obligated to pay or shall
7 provide the service for which the provider is legally obligated to
8 perform according to the provider's contractual obligations under the
9 motor vehicle extended service contracts issued or sold by the
10 provider.

385.204. 1. No person, other than a dealer, manufacturer,
2 federally insured depository institution, or a lender licensed and
3 defined under the requirements of sections 367.100 to 367.215, RSMo,
4 shall sell, offer for sale, or solicit the sale of a motor vehicle extended
5 service contract to a consumer.

6 2. No administrator or provider shall use a dealer as a fronting
7 company, and no dealer shall act as a fronting company. For purposes
8 of this subsection, "fronting company" means a dealer that authorizes
9 a third-party administrator or provider to use its name or business to
10 evade or circumvent the provisions of subsection 1 of this section.

11 3. Motor vehicle extended service contracts issued, sold, or
12 offered for sale in this state shall be written in clear, understandable
13 language, and the entire contract shall be printed or typed in easy-to-
14 read type and conspicuously disclose the requirements in this section,
15 as applicable.

16 4. Motor vehicle extended service contracts insured under a
17 reimbursement insurance policy under subsection 3 of section 385.201
18 shall contain a statement in substantially the following form:
19 "Obligations of the provider under this service contract are guaranteed
20 under a service contract reimbursement insurance policy. If the
21 provider fails to pay or provide service on a claim within sixty days
22 after proof of loss has been filed, the contract holder is entitled to make
23 a claim directly against the insurance company." A claim against the
24 provider also shall include a claim for return of the unearned provider
25 fee. The motor vehicle extended service contract also shall state
26 conspicuously the name and address of the insurer.

27 5. Motor vehicle extended service contracts not insured under a
28 reimbursement insurance policy pursuant to subsection 3 of section
29 385.201 shall contain a statement in substantially the following form:
30 "Obligations of the provider under this service contract are backed only
31 by the full faith and credit of the provider (issuer) and are not
32 guaranteed under a service contract reimbursement insurance policy."

33 A claim against the provider also shall include a claim for return of the
34 unearned provider fee. The motor vehicle extended service contract
35 also shall state conspicuously the name and address of the provider.

36 6. Motor vehicle extended service contracts shall identify any
37 administrator, the provider obligated to perform the service under the
38 contract, the motor vehicle extended service contract seller, and the
39 service contract holder to the extent that the name and address of the
40 service contract holder has been furnished by the service contract
41 holder.

42 7. Motor vehicle extended service contracts shall state
43 conspicuously the total purchase price and the terms under which the
44 motor vehicle extended service contract is sold. The purchase price is
45 not required to be preprinted on the motor vehicle extended service
46 contract and may be negotiated at the time of sale with the service
47 contract holder.

48 8. If prior approval of repair work is required, the motor vehicle
49 extended service contracts shall state conspicuously the procedure for
50 obtaining prior approval and for making a claim, including a toll-free
51 telephone number for claim service and a procedure for obtaining
52 emergency repairs performed outside of normal business hours.

53 9. Motor vehicle extended service contracts shall state
54 conspicuously the existence of any deductible amount.

55 10. Motor vehicle extended service contracts shall specify the
56 merchandise and services to be provided and any limitations,
57 exceptions, and exclusions.

58 11. Motor vehicle extended service contracts shall state the
59 conditions upon which the use of non-original manufacturer's parts, or
60 substitute service, may be allowed. Conditions stated shall comply with
61 applicable state and federal laws.

62 12. Motor vehicle extended service contracts shall state any
63 terms, restrictions, or conditions governing the transferability of the
64 motor vehicle extended service contract.

65 13. Motor vehicle extended service contracts shall state the
66 terms, restrictions, or conditions governing termination of the service
67 contract by the service contract holder. The provider of the motor
68 vehicle extended service contract shall mail a written notice to the
69 contract holder within fifteen days of the date of termination.

70 **14. Motor vehicle extended service contracts shall require every**
71 **provider to permit the service contract holder to return the contract**
72 **within at least twenty business days of mailing date of the motor**
73 **vehicle extended service contract or within at least ten days if the**
74 **service contract is delivered at the time of sale or within a longer time**
75 **period permitted under the contract. If no claim has been made under**
76 **the contract, the contract is void and the provider shall refund to the**
77 **contract holder the full purchase price of the contract. A ten percent**
78 **penalty per month shall be added to a refund that is not paid within**
79 **thirty days of return of the contract to the provider. The applicable**
80 **free-look time periods on service contracts shall apply only to the**
81 **original service contract purchaser.**

82 **15. Motor vehicle extended service contracts shall set forth all**
83 **of the obligations and duties of the service contract holder, such as the**
84 **duty to protect against any further damage and the requirement for**
85 **certain service and maintenance.**

86 **16. Motor vehicle extended service contracts shall state clearly**
87 **whether or not the service contract provides for or excludes**
88 **consequential damages or preexisting conditions.**

385.205. 1. A provider shall not use in its name the words
2 **insurance, casualty, guaranty, surety, mutual, or any other words**
3 **descriptive of the insurance, casualty, guaranty, or surety business, nor**
4 **shall such provider use a name deceptively similar to the name or**
5 **description of any insurance or surety corporation, or any other**
6 **provider. This section shall not apply to a company that was using any**
7 **of the prohibited language in its name prior to August 28,**
8 **2004. However, a company using the prohibited language in its name**
9 **shall disclose conspicuously in its motor vehicle extended service**
10 **contract the following statement: "This agreement is not an insurance**
11 **contract."**

12 **2. A provider or its representative shall not in its motor vehicle**
13 **extended service contracts or literature make, permit, or cause to be**
14 **made any false or misleading statement, or deliberately omit any**
15 **material statement that would be considered misleading if omitted, in**
16 **connection with the sale, offer to sell or advertisement of a motor**
17 **vehicle extended service contract.**

18 **3. A person, such as a bank, savings and loan association, lending**

19 institution, manufacturer or seller of any product, shall not require the
20 purchase of a service contract as a condition of a loan or a condition
21 for the sale of any property.

385.207. 1. An administrator, provider, or other intermediary
2 shall keep accurate accounts, books, and records concerning
3 transactions regulated by sections 385.200 to 385.212.

4 2. An administrator's, provider's, or other intermediary's
5 accounts, books, and records shall include:

6 (1) Copies of each type of motor vehicle extended service
7 contract issued;

8 (2) The name and address of each service holder to the extent
9 that the name and address have been furnished by the service contract
10 holder;

11 (3) A list of the provider locations where motor vehicle extended
12 service contracts are marketed, sold, or offered for sale; and

13 (4) Claims files that shall contain at least the dates, amounts, and
14 description of all receipts, claims, and expenditures related to the
15 motor vehicle extended service contracts.

16 3. Except as provided in this section, an administrator shall
17 retain all records pertaining to each motor vehicle extended service
18 contract holder for at least three years after the specified period of
19 coverage has expired.

20 4. An administrator, provider, or other intermediary may keep
21 all records required under sections 385.200 to 385.212 on a computer
22 disk or other similar technology. If an administrator, provider, or
23 other intermediary maintains records in other than hard copy, records
24 shall be accessible from a computer terminal available to the director
25 and be capable of duplication to legible hard copy.

26 5. An administrator, provider, or other intermediary
27 discontinuing business in this state shall maintain its records until it
28 furnishes the director satisfactory proof that it has discharged all
29 obligations to contract holders in this state.

30 6. An administrator, provider, or other intermediary shall make
31 all accounts, books, and records concerning transactions regulated
32 pursuant to sections 385.200 to 385.212 or other pertinent laws available
33 to the director upon request.

385.208. As applicable, an insurer that issued a reimbursement

2 insurance policy shall not terminate the policy until a notice of
3 termination, in a form and time frame prescribed by the director, has
4 been mailed or delivered to the director. The termination of a
5 reimbursement insurance policy shall not reduce the issuer's
6 responsibility for motor vehicle extended service contracts issued by
7 providers prior to the date of the termination.

385.209. 1. Providers are considered to be the agent of the
2 insurer that issued the reimbursement insurance policy. In cases
3 where a provider is acting as an administrator and enlists other
4 providers, the provider acting as the administrator shall notify the
5 insurer of the existence and identities of the other providers.

6 2. The provisions of sections 385.200 to 385.212 shall not prevent
7 or limit the right of an insurer that issued a reimbursement insurance
8 policy to seek indemnification or subrogation against a provider if the
9 insurer pays or is obligated to pay the service contract holder sums
10 that the provider was obligated to pay under the provisions of the
11 motor vehicle extended service contract or under a contractual
12 agreement.

385.210. 1. The director may conduct investigations or
2 examinations of providers, administrators, insurers, or other persons
3 to enforce the provisions of sections 385.200 to 385.212 and protect
4 service contract holders in this state.

5 2. If the director determines that a person has engaged, is
6 engaging, or is about to engage in a violation of sections 385.200 to
7 385.212 or a rule adopted or order issued pursuant thereto, or that a
8 person has materially aided, is materially aiding, or is about to
9 materially aid an act, practice, omission or course of business
10 constituting a violation of sections 385.200 to 385.212 or a rule adopted
11 or order issued pursuant thereto, the director may issue such
12 administrative orders as authorized under section 374.046, RSMo. A
13 violation of this section is a level two violation under section 374.049,
14 RSMo.

15 3. If the director believes that a person has engaged, is engaging,
16 or is about to engage in a violation of sections 385.200 to 385.212 or a
17 rule adopted or order issued pursuant thereto, or that a person has
18 materially aided, is materially aiding, or is about to materially aid an
19 act, practice, omission or course of business constituting a violation of

20 sections 385.200 to 385.212 or a rule adopted or order issued pursuant
21 thereto, the director may maintain a civil action for relief authorized
22 under section 374.048, RSMo. A violation of this section is a level two
23 violation under section 374.049, RSMo.

24 4. The enforcement authority of the director under this section
25 is cumulative to any other statutory authority of the director.

385.211. The director may promulgate rules to effectuate sections
2 385.200 to 385.212. Any rule or portion of a rule, as that term is defined
3 in section 536.010, RSMo, that is created under the authority delegated
4 in this section shall become effective only if it complies with and is
5 subject to all of the provisions of chapter 536, RSMo, and, if applicable,
6 section 536.028, RSMo. This section and chapter 536, RSMo, are
7 nonseverable and if any of the powers vested with the general assembly
8 pursuant to chapter 536, RSMo, to review, to delay the effective date,
9 or to disapprove and annul a rule are subsequently held
10 unconstitutional, then the grant of rulemaking authority and any rule
11 proposed or adopted after August 28, 2006, shall be invalid and void.

385.212. 1. The provisions of sections 385.200 to 385.212 shall not
2 apply to:

- 3 (1) Warranties;
- 4 (2) Maintenance agreements;
- 5 (3) Commercial transactions; and
- 6 (4) Service contracts sold or offered for sale to persons other
7 than consumers.

8 2. Manufacturer's contracts on the manufacturer's products need
9 only comply with the provisions of sections 385.204, 385.205, and
10 385.210.

385.300. 1. As used in sections 385.300 to 385.312, the terms
2 "consumer", "director", "maintenance agreement", "manufacturer",
3 "nonoriginal manufacturer's parts", "person", "premium", and "warranty"
4 shall have the same meaning as provided in section 385.200.

5 2. As used in sections 385.300 to 385.312, the following terms
6 mean:

- 7 (1) "Administrator", the person who is responsible for the
8 handling and adjudication of claims under the product service
9 agreements;

10 (2) "Contract holder", a person who is the purchaser or holder of

11 a service contract;

12 (3) "Property", all forms of property;

13 (4) "Provider", a person who issues, makes, or directly
14 underwrites a service contract, or is contractually obligated to the
15 service contract holder under the terms of the service contract;

16 (5) "Provider fee", the consideration paid for a service contract,
17 if any, by a service contract holder;

18 (6) "Reimbursement insurance policy", a policy of insurance
19 issued to a provider to either provide reimbursement to the provider
20 under the terms of the insured service contract issued or sold by the
21 provider, or alternatively, in the event of nonperformance by the
22 provider, to pay to service contract holders on behalf of the provider
23 all covered contractual obligations incurred by the provider under the
24 terms of the insured service contract issued or sold by the provider;
25 and

26 (7) "Service contract", a contract for a specific duration and
27 consideration to perform the repair, replacement, or maintenance of
28 property or indemnification for repair, replacement, or maintenance,
29 for the operational or structural failure of any residential or other
30 property due to a defect in materials, workmanship, or normal wear
31 and tear, with or without additional provision for incidental payment
32 of indemnity under limited circumstances, including, but not limited to,
33 unavailability of parts, obsolescence, food spoilage, rental, and
34 shipping. Service contracts may provide for the repair, replacement or
35 maintenance of property for damage resulting from power surges or
36 accidental damage. Service contract providers and administrators are
37 not deemed to be engaged in the business of insurance in this state.

385.301. 1. It is unlawful for any person to issue, sell or offer for
2 sale in this state any service contract, unless each provider has
3 registered with the director on a form prescribed by the director. Each
4 provider shall pay to the director a fee established by the director by
5 rule, but not to exceed three hundred dollars annually.

6 2. A provider may, but is not required to, appoint an
7 administrator or other designee to be responsible for any or all of the
8 administration of service contracts and compliance with sections
9 385.300 to 385.312.

10 3. A provider or its designee shall provide a copy of the service

11 contract to the service contract holder within a reasonable period of
12 time following the date of purchase.

13 4. In order to assure the faithful performance of a provider's
14 obligations to its contract holders, each provider who contractually is
15 obligated to provide service under a service contract shall comply with
16 one of the following subdivisions:

17 (1) (a) Maintain a funded reserve account for its obligations
18 under its contracts issues and outstanding in this state. The reserve
19 shall not be less than forty percent of gross consideration received, less
20 claims paid, on the sale of the service contract for all in-force
21 contracts. The reserve account shall be subject to examination and
22 review by the director; and

23 (b) Place in trust with the director a financial security deposit,
24 having a value of not less than five percent of the gross consideration
25 received, less claims paid, on the sale of the service contract for all
26 service contracts issued and in force, but not less than twenty-five
27 thousand dollars, consisting of one of the following:

28 a. A surety bond issued by an authorized surety;

29 b. Securities of the type eligible for deposit by authorized
30 insurers in this state;

31 c. Cash;

32 d. A letter of credit issued by a qualified financial institution; or

33 e. Another form of security prescribed by regulations issued by
34 the director; or

35 (2) (a) Maintain a net worth of one hundred million dollars; and

36 (b) Provide the director with a copy of the provider's or, if the
37 provider's financial statements are consolidated with those of its
38 parent company, the provider's parent company's most recent Form 10-
39 K filed or Form 20-F with the Securities and Exchange Commission
40 (SEC) within the last calendar year, or if the company does not file
41 with the SEC, a copy of the company's audited financial statements,
42 which shows a net worth of the provider or its parent company of at
43 least one hundred million dollars. If the provider's parent company's
44 Form 10-K, Form 20-F, or audited financial statements are filed to meet
45 the provider's financial stability requirement, then the parent company
46 shall agree to guarantee the obligations of the obligor relating to
47 service contracts sold by the provider in this state; or

48 **(3) Obtain a reimbursement insurance policy that demonstrates**
49 **to the satisfaction of the director that one hundred percent of its**
50 **service contract obligations to contract holders is covered by such**
51 **policy and satisfies the requirements of this section. For the purposes**
52 **of this subsection, the reimbursement insurance policy shall contain**
53 **the following provisions:**

54 **(a) In the event that the provider is unable to fulfill its**
55 **obligation under contracts issued in this state for any reason, including**
56 **insolvency, bankruptcy, or dissolution, the insurer will pay losses and**
57 **unearned fees under such plans directly to the contract holder making**
58 **a claim under the contract;**

59 **(b) The insurer issuing the contractual liability policy shall**
60 **assume full responsibility for the administration of claims in the event**
61 **of the inability of the provider to do so; and**

62 **(c) The policy may be canceled or not renewed by either the**
63 **insurer or the provider not less than sixty days after written notice**
64 **thereof has been given to the director and provider by the insurer;**

65 **(4) The reimbursement insurance referenced in subdivision**
66 **(3) above shall be obtained from an insurer that is authorized,**
67 **registered or otherwise permitted to transact insurance in this state or**
68 **a surplus lines insurer authorized pursuant to the laws of this state and**
69 **which insurer meets one of the following requirements:**

70 **(a) Maintain, at the time the policy is filed with the director and**
71 **continuously thereafter:**

72 **a. Surplus as to policyholders and paid-in capital of at least**
73 **fifteen million dollars; and**

74 **b. Annually file copies of the insurer's financial statements, its**
75 **National Association of Insurance Commissioners annual statement,**
76 **and the actuarial certification if required and filed in the insurer's**
77 **state of domicile; or**

78 **(b) Maintain, at the time the policy is filed with the director and**
79 **continuously thereafter:**

80 **a. Surplus as to policyholders and paid-in capital of less than**
81 **fifteen million dollars but at least equal to ten million dollars;**

82 **b. Demonstrate to the satisfaction of the director that the insurer**
83 **maintains a ratio of net written premiums, wherever written, to surplus**
84 **as to policyholders and paid-in capital of not greater than three to one;**

85 and

86 c. Annually file copies of the insurer's financial statements, its
87 National Association of Insurance Commissioners annual statement,
88 and the actuarial certification if required and filed in the insurer's
89 state of domicile.

90 5. Provider fees collected on service agreements shall not be
91 subject to premium taxes. Premiums for reimbursement insurance
92 policies shall be subject to applicable taxes.

93 6. Except for compliance with the provider's registration
94 requirement in subsection 1 of this section, a person marketing, selling,
95 or offering to sell service contracts for a provider that is registered
96 under this section is exempt from licensing as a producer under the
97 insurance laws of this state.

385.302. Reimbursement insurance policies insuring service
2 contracts issued, sold or offered for sale in this state shall state that,
3 upon failure of the provider to perform under the contract, including
4 the failure to return the unearned provider fee, the insurer that issued
5 the policy shall pay or perform according to the provider's contractual
6 obligations under the service contracts insured by the insurer.

385.303. 1. Service contracts marketed, issued, sold, or offered
2 for sale in this state shall be written in clear, conspicuous, and
3 understandable language, and the entire contract shall be printed or
4 typed in easy-to-read type and conspicuously disclose the requirements
5 in this section, as applicable.

6 2. Service contracts insured under a reimbursement insurance
7 policy under subdivision (3) of subsection 4 of section 385.301 shall
8 contain a statement in substantially the following form: "Obligations
9 of the provider under this service contract are guaranteed under a
10 reimbursement insurance policy. If the provider fails to pay or provide
11 service on a claim within sixty days after proof of loss has been filed,
12 the contract holder is entitled to make a claim directly against the
13 insurance company." A claim against the provider may also include a
14 claim for return of the unearned provider fee. The service contract
15 also shall state the name and address of the insurer.

16 3. Service contracts not insured under a reimbursement
17 insurance policy under subdivision (3) of subsection 4 of section
18 385.301 shall contain a statement in substantially the following form:

19 **"Obligations of the provider under this service contract are backed only**
20 **by the full faith and credit of the provider (issuer) and are not**
21 **guaranteed under a reimbursement insurance policy." A claim against**
22 **the provider shall also include a claim for return of the unearned**
23 **provider fee. The service contract shall also state the name and**
24 **address of the provider.**

25 **4. Service contracts shall identify any administrator, the**
26 **provider obligated to perform under the contract, and the service**
27 **contract seller, if different than the provider or administrator. The**
28 **identities of such parties are not required to be preprinted on the**
29 **service contract and may be added to the service contract prior to**
30 **delivery to the contract holder.**

31 **5. Service contracts shall state the total purchase price and the**
32 **terms under which the service contract is sold. The purchase price is**
33 **not required to be pre-printed on the service contract and may be**
34 **negotiated at the time of sale with the service contract holder.**

35 **6. If prior approval of repair work is required, the service**
36 **contracts shall state the procedure for obtaining prior approval and for**
37 **making a claim, including a toll-free telephone number for claim**
38 **service and a procedure for obtaining emergency repairs performed**
39 **outside of normal business hours.**

40 **7. Service contracts shall state the existence of any deductible**
41 **amount.**

42 **8. Service contracts shall specify the merchandise and services**
43 **to be provided and any limitations, exceptions, or exclusions.**

44 **9. Service contracts shall state the conditions upon which the**
45 **use of non-original manufacturers' parts, refurbished merchandise, or**
46 **substitute service, may be allowed. Conditions stated shall comply with**
47 **applicable state and federal laws.**

48 **10. Service contracts shall state any terms, restrictions, or**
49 **conditions governing the transferability of the service contract.**

50 **11. Service contracts shall state any terms, restrictions, or**
51 **conditions governing termination of the service agreement by the**
52 **service contract holder and provider.**

53 **12. Service contracts for which the service contract holder pays**
54 **a separate, identified consideration shall require every provider to**
55 **permit the service contract holder to return the contract within at least**

56 twenty days of the date of mailing of the service contract or within at
57 least ten days if the service contract is delivered at the time of sale or
58 within a longer time period permitted under the contract. If no claim
59 has been made under the contract, the contract is void and the
60 provider shall refund to the contract holder the full purchase price of
61 the contract. A ten percent penalty per month shall be added to a
62 refund that is not paid within forty-five days of return of the contract
63 to the provider. The applicable free-look time periods on service
64 contracts shall apply only to the original service contract purchaser,
65 and only if no claim has been made prior to its return to the provider.

66 13. Service contracts shall set forth all of the obligations and
67 duties of the service contract holder, such as the duty to protect
68 against any further damage and the requirement for certain service
69 and maintenance.

70 14. Service contracts shall state clearly whether or not the
71 service contract provides for or excludes consequential damages,
72 preexisting conditions, or events covered under the original
73 manufacturer's warranty.

74 15. Service contracts shall state any limitations on the number
75 or value of repairs, replacements, or monetary settlements, as
76 applicable, that will be provided during the term of coverage.

385.304. 1. It is unlawful for any provider to use in its name the
2 words insurance, casualty, guaranty, surety, mutual, or any other words
3 descriptive of the insurance, casualty, guaranty, or surety business, or
4 any name deceptively similar to the name or description of any
5 insurance or surety corporation, or other provider.

6 2. This section shall not apply to a company that was using any
7 of the prohibited language in its name prior to August 28,
8 2006. However, a company using the prohibited language in its name
9 shall disclose in its service contracts a statement in substantially the
10 following: "This contract is not an insurance contract."

11 3. It is unlawful for a provider or its representative in its service
12 contracts or literature to make, permit, or cause to be made any false
13 or misleading statement, or deliberately omit any material statement
14 that would be considered misleading if omitted, in connection with the
15 sale, offer to sell or advertisement of a product service contract.

16 4. It is unlawful for a person, such as a bank, savings and loan

17 association, or lending institution, to require the purchase of a service
18 contract as a condition of a loan or other financing transaction.

19 5. It is unlawful for a person, such as a manufacturer or retailer,
20 to require the purchase of a service contract as a condition to the sale
21 of goods or services, unless consideration for the service contract is
22 paid directly by such person and a service contract is furnished
23 without separate consideration to all similarly situated purchasers of
24 the related goods or services.

385.305. 1. A provider or administrator shall keep accurate
2 accounts, books, and records concerning transactions regulated under
3 sections 385.300 to 385.312. However, only one set of such accounts,
4 books, and records is required to be maintained and may be maintained
5 by third parties provided the provisions of this section are met.

6 2. An administrator's or provider's accounts, books, and records
7 shall include:

- 8 (1) Copies of each type of service contract issued;
9 (2) The name and address of each service contract holder to the
10 extent that the name and address have been furnished by the service
11 contract holder;
12 (3) A list of the provider locations where service contracts are
13 marketed, sold, or offered for sale; and
14 (4) Claims files that shall contain at least the dates, amounts, and
15 description of all receipts, claims, and expenditures related to the
16 service contracts.

17 3. Except as provided in subsection 5 of this section, an
18 administrator or provider shall retain or arrange for the retention of
19 all records pertaining to each service contract holder for at least three
20 years after the specified period of coverage had expired.

21 4. An administrator or provider may keep all records required
22 under sections 385.300 to 385.312 on a computer disk or other similar
23 technology. If an administrator or provider maintains records in other
24 than hard copy, records shall be accessible from a computer terminal
25 available to the director and be capable of duplication to legible hard
26 copy.

27 5. An administrator or provider discontinuing business in this
28 state shall maintain or arrange for the maintenance of its records until
29 it furnishes the director satisfactory proof that it has discharged all

30 obligations to contract holders in this state.

31 6. An administrator or provider shall make all accounts, books,
32 and records concerning transactions regulated under sections 385.300
33 to 385.312 or other pertinent laws available to the director upon
34 request.

 385.306. As applicable, an insurer that issued a reimbursement
2 insurance policy shall not terminate or non-renew the policy until a
3 notice of termination has been mailed or delivered to the director. The
4 termination or non-renewal of a reimbursement insurance policy shall
5 not reduce the issuer's responsibility for service contracts issued by
6 providers prior to the date of the termination.

 385.307. 1. Providers are considered to be the agent of the
2 insurer which issued the reimbursement insurance policy for purposes
3 of obligating the insurer to contract holders under service contracts
4 associated with the insurer's reimbursement policy, and the payment
5 of premium by the provider is not a condition to the insurer's
6 obligations for otherwise validly issued service contracts.

 2. Sections 385.300 to 385.312 shall not prevent or limit the right
8 of an insurer which issued a reimbursement insurance policy to seek
9 indemnification or subrogation against a provider if the issuer pays or
10 is obligated to pay the service contract holder sums that the provider
11 was obligated to pay pursuant to the provisions of the product service
12 contract.

 385.310. 1. The director may conduct investigations or
2 examinations of providers, administrators, insurers, or other persons
3 to enforce the provisions of sections 385.300 to 385.312 and protect
4 service contract holders in this state.

 2. If the director determines that a person has engaged, is
6 engaging, or is about to engage in a violation of sections 385.300 to
7 385.312 or a rule adopted or order issued pursuant thereto, or that a
8 person has materially aided, is materially aiding, or is about to
9 materially aid an act, practice, omission, or course of business
10 constituting a violation of sections 385.300 to 385.312 or a rule adopted
11 or order issued pursuant thereto, the director may issue such
12 administrative orders as authorized under section 374.046, RSMo. A
13 violation of this section is a level two violation under section 374.049,
14 RSMo.

15 **3. If the director believes that a person has engaged, is engaging,**
16 **or is about to engage in a violation of sections 385.300 to 385.312 or a**
17 **rule adopted or order issued pursuant thereto, or that a person has**
18 **materially aided, is materially aiding, or is about to materially aid an**
19 **act, practice, omission, or course of business constituting a violation of**
20 **sections 385.300 to 385.312 or a rule adopted or order issued pursuant**
21 **thereto, the director may maintain a civil action for relief authorized**
22 **under section 374.048, RSMo.**

23 **4. The enforcement authority of the director under this section**
24 **is cumulative to any other statutory authority of the director.**

385.311. The director may promulgate rules to effectuate sections
2 **385.300 to 385.312. Any rule or portion of a rule, as that term is defined**
3 **in section 536.010, RSMo, that is created under the authority delegated**
4 **in this section shall become effective only if it complies with and is**
5 **subject to all of the provisions of chapter 536, RSMo, and, if applicable,**
6 **section 536.028, RSMo. This section and chapter 536, RSMo, are**
7 **nonseverable and if any of the powers vested with the general assembly**
8 **pursuant to chapter 536, RSMo, to review, to delay the effective date,**
9 **or to disapprove and annul a rule are subsequently held**
10 **unconstitutional, then the grant of rulemaking authority and any rule**
11 **proposed or adopted after August 28, 2006, shall be invalid and void.**

385.312. 1. Sections 385.300 to 385.312 shall not apply to:

- 2 **(1) Warranties;**
- 3 **(2) Maintenance agreements;**
- 4 **(3) Warranties, service contracts, or maintenance agreements**
5 **offered by public utilities on their transmission devices to the extent**
6 **they are regulated under the laws of this state;**
- 7 **(4) Service contracts sold or offered for sale to persons other**
8 **than consumers;**
- 9 **(5) Service contracts sold or offered to nonresidents of this state**
10 **regardless of whether the entity selling or offering such contracts is**
11 **located or doing business in this state;**
- 12 **(6) Motor vehicle extended service contracts, as defined in**
13 **section 385.200; and**
- 14 **(7) Agreements or warranties which provide for the service,**
15 **repair, replacement, or maintenance of the systems, appliances, and**
16 **structural components of residential or commercial real property.**

17 **2. Manufacturer's service contracts on the manufacturer's**
18 **products need only comply with the provisions of sections 385.301,**
19 **385.304, 385.307, and 385.310.**

 [374.261. As used in sections 374.261 to 374.269, the
2 following words mean:

3 (1) "Director", the director of the department of insurance;

4 (2) "Examiners", nonsalaried employees of the department
5 of insurance conducting an examination pursuant to section
6 374.190;

7 (3) "Sick leave", those days of leave taken during the
8 conduct of an examination during which an examiner is prevented
9 from conducting an examination due to illness or injury.]

 [374.263. There is hereby created in the state treasury a
2 fund to be known as the "Insurance Examiner's Sick Leave Fund",
3 hereinafter referred to as the "fund". The fund shall be used to pay
4 the daily wages of department of insurance examiners who are
5 temporarily unable to continue an examination of an insurance
6 company or companies pursuant to section 374.190, because of
7 illness or injury suffered or sustained by the examiner during the
8 course of the examination which the examiner is conducting.]

 [374.265. 1. There shall be an amount assessed against
2 those domestic insurers which are subject to premium tax and are
3 engaged in the business of insurance within this state, which
4 amount shall be no less than one hundred and fifty nor greater
5 than five hundred dollars.

6 2. The initial assessment shall be made within one month
7 of September 28, 1981, in the total amount of thirty-six thousand
8 dollars. Thereafter, assessments shall be made annually, or as
9 needed whenever the balance in the fund becomes less than ten
10 thousand dollars. The amount of such subsequent assessments
11 shall be that amount necessary to return the balance in the fund
12 to thirty-six thousand dollars.]

 [374.267. 1. The director of the department of insurance,
2 his agents or appointees shall be empowered to make assessments
3 pursuant to section 374.265, and to administer the fund.

4 2. The director, his agents or appointees shall compensate

5 an examiner out of the fund only after the examiner has satisfied
6 the director, his agents or appointees that:

7 (1) The examiner was employed by the department of
8 insurance to conduct an examination of an insurance company or
9 companies pursuant to section 374.190 at the time of the illness or
10 injury for which daily wages are claimed; and

11 (2) The examiner was prevented from conducting the
12 examination due to illness or injury.

13 3. The amount paid by the director, his agents or
14 appointees to an examiner from the fund shall not exceed the
15 amount of the examiner's daily wages times the number of days
16 during which the examiner was prevented from conducting an
17 examination as result of illness or injury, but in no event shall any
18 examiner be paid for more than one and one-fourth days times the
19 number of months for which he has been employed by the
20 department of insurance as an examiner, nor shall an examiner be
21 paid for or receive credit for sick leave after August 13, 1988, for
22 or on the basis of any month, months or portion thereof before
23 August 13, 1988.]

[375.787. Whenever the director believes, from evidence
2 satisfactory to him, that any insurance company is violating or
3 about to violate the provisions of section 375.786, the director may
4 cause a complaint to be filed in the circuit court of Cole County,
5 Missouri, to enjoin and restrain such insurance company from
6 continuing such violation or engaging therein or doing any act in
7 furtherance thereof. The court shall have jurisdiction of the
8 proceeding and shall have the power to make and enter an order or
9 judgment awarding such preliminary or final injunctive relief as in
10 its judgment is proper.]

[375.1012. 1. If, after such hearing, the director determines
2 that the insurer charged had engaged in an improper claims
3 practice prohibited by sections 375.1000 to 375.1018, he shall
4 reduce his findings to writing and shall issue and cause to be
5 served upon the person charged with the violation a copy of such
6 findings and an order requiring such person to cease and desist
7 from engaging in such improper claims practice, and thereafter the

8 director may, at his discretion order one or more of the following:

9 (1) Payment of a monetary penalty of not more than one
10 thousand dollars for each violation but not to exceed an aggregate
11 penalty of one hundred thousand dollars in any twelve-month
12 period unless the violation was committed flagrantly and in
13 conscious disregard of sections 375.1000 to 375.1018, in which case
14 the penalty shall be not more than twenty-five thousand dollars for
15 each violation but not to exceed an aggregate penalty of two
16 hundred fifty thousand dollars in any twelve-month period;

17 (2) Suspension or revocation of the insurer's license if such
18 insurer knew or reasonably should have known it was in violation
19 of sections 375.1000 to 375.1018.

20 2. Until the expiration of the time allowed under section
21 375.1016 for filing a petition for judicial review, if no such petition
22 has been duly filed within such time, or if a petition or review has
23 been filed within such time, then until the transcript of the record
24 in the proceeding has been filed in the circuit court of Cole County,
25 the director may at any time, upon such notice and in such manner
26 as he shall deem proper, modify or set aside in whole or in part any
27 order issued by him under this section.

28 3. After the expiration of the time allowed for filing such a
29 petition for review, if no such petition has been duly filed within
30 such time, the director may at any time, after notice and
31 opportunity for hearing, reopen and alter, modify or set aside, in
32 whole or in part, any order issued by him under this section,
33 whenever in his opinion conditions of fact or of law have so
34 changed as to require such action or if the public interest shall so
35 require.

36 4. Nothing contained in sections 375.1000 to 375.1018 shall
37 be construed to prohibit the director and the person from agreeing
38 to a voluntary forfeiture with or without proceedings being
39 instituted.]

[407.1200. As used in sections 407.1200 to 407.1227, the
2 following terms shall mean:

3 (1) "Administrator", the person who is responsible for the
4 administration of the service contracts or the service contracts plan

5 and who is responsible for any filings required by sections 407.1200
6 to 407.1227;

7 (2) "Consumer", a natural person who buys other than for
8 purposes of resale any motor vehicle that is distributed in
9 commerce and that is normally used for personal, family, or
10 household purposes and not for business or research purposes;

11 (3) "Director", the director of the department of insurance;

12 (4) "Maintenance agreement", a contract of limited duration
13 that provides for scheduled maintenance only;

14 (5) "Manufacturer", a person that:

15 (a) Manufactures or produces the property and sells the
16 property under its own name or label;

17 (b) Is a wholly owned subsidiary of the person who
18 manufactures or produces the property;

19 (c) Is a corporation which owns one hundred percent of the
20 person who manufactures or produces the property;

21 (d) Does not manufacture or produce the property, but the
22 property is sold under its trade name label;

23 (e) Manufactures or produces the property and the property
24 is sold under the trade name or label of another person; or

25 (f) Does not manufacture or produce the property but,
26 pursuant to a written contract, licenses the use of its trade name
27 or label to another person that sells the property under the
28 licensor's trade name or label;

29 (6) "Mechanical breakdown insurance", a policy, contract,
30 or agreement issued by an authorized insurer that provides for the
31 repair, replacement, or maintenance of a motor vehicle or
32 indemnification for repair, replacement, or service, for the
33 operational or structural failure of a motor vehicle due to a defect
34 in materials or workmanship or to normal wear and tear;

35 (7) "Motor vehicle extended service contract" or "service
36 contract", a contract or agreement for a separately stated
37 consideration or for a specific duration to perform the repair,
38 replacement, or maintenance of a motor vehicle or indemnification
39 for repair, replacement, or maintenance, for the operational or
40 structural failure due to a defect in materials, workmanship, or

41 normal wear and tear, with or without additional provision for
42 incidental payment of indemnity under limited circumstances,
43 including, but not limited to, towing, rental, and emergency road
44 service, but does not include mechanical breakdown insurance or
45 maintenance agreements;

46 (8) "Nonoriginal manufacturer's parts", replacement parts
47 not made for or by the original manufacturer of the property,
48 commonly referred to as "after market parts";

49 (9) "Person", an individual, partnership, corporation,
50 incorporated or unincorporated association, joint stock company,
51 reciprocal, syndicate, or any similar entity or combination of
52 entities acting in concert;

53 (10) "Premium", the consideration paid to an insurer for a
54 reimbursement insurance policy;

55 (11) "Provider", a person who administers, issues, makes,
56 provides, sells, or offers to sell a motor vehicle extended service
57 contract, or who is contractually obligated to provide service under
58 a motor vehicle extended service contract such as sellers,
59 administrators, and other intermediaries;

60 (12) "Provider fee", the consideration paid for a service
61 contract in excess of the premium;

62 (13) "Reimbursement insurance policy", a policy of
63 insurance issued to a provider and pursuant to which the insurer
64 agrees, for the benefit of the service contract holders, to discharge
65 all of the obligations and liabilities of the provider under the terms
66 of the service contracts in the event of nonperformance by the
67 provider. All obligations and liabilities include, but are not limited
68 to, failure of the provider to perform under the service contract and
69 the return of the unearned provider fee in the event of the
70 provider's unwillingness or inability to reimburse the unearned
71 provider fee in the event of termination of a service contract;

72 (14) "Service contract holder" or "contract holder", a person
73 who is the purchaser or holder of a service contract;

74 (15) "Warranty", a warranty made solely by the
75 manufacturer, importer, or seller of property or services without
76 charge, that is not negotiated or separated from the sale of the

77 product and is incidental to the sale of the product, that guarantees
78 indemnity for defective parts, mechanical or electrical breakdown,
79 labor, or other remedial measures, such as repair or replacement
80 of the property or repetition of services.]

[407.1203. 1. Service contracts shall not be issued, sold, or
2 offered for sale in this state unless the administrator or its
3 designee has:

4 (1) Provided a receipt for the purchase of the service
5 contract to the contract holder at the date of purchase;

6 (2) Provided a copy of the service contract to the service
7 contract holder within a reasonable period of time from the date of
8 purchase; and

9 (3) Complied with the provisions of sections 407.1200 to
10 407.1227.

11 2. All administrators of service contracts sold in this state
12 shall file a registration with the director on a form, at a fee and at
13 a frequency prescribed by the director.

14 3. In order to assure the faithful performance of a
15 provider's obligations to its contract holders, each provider who is
16 contractually obligated to provide service under a service contract
17 shall:

18 (1) Insure all service contracts under a reimbursement
19 insurance policy issued by an insurer authorized to transact
20 insurance in this state; or

21 (2) (a) Maintain a funded reserve account for its obligation
22 under its contracts issued and outstanding in this state. The
23 reserves shall not be less than forty percent of gross consideration
24 received, less claims paid, on the sale of the service contract for all
25 in-force contracts. The reserve account shall be subject to
26 examination and review by the director; and

27 (b) Place in trust with the director a financial security
28 deposit, having a value of not less than five percent of the gross
29 consideration received, less claims paid, on the sale of the service
30 contract for all service contracts issued and in force, but not less
31 than twenty-five thousand dollars, consisting of one of the
32 following:

- 33 a. A surety bond issued by an authorized surety;
34 b. Securities of the type eligible for deposit by authorized
35 insurers in this state;
36 c. Cash;
37 d. A letter of credit issued by a qualified financial
38 institution; or
39 e. Another form of security prescribed by regulations issued
40 by the director; or

41 (3) (a) Maintain a net worth of one hundred million dollars;
42 and

43 (b) Upon request, provide the director with a copy of the
44 provider's or, if the provider's financial statements are consolidated
45 with those of its parent company, the provider's parent company's
46 most recent Form 10-K filed with the Securities and Exchange
47 Commission (SEC) within the last calendar year, or if the company
48 does not file with the SEC, a copy of the company's audited
49 financial statements, which shows a net worth of the provider or its
50 parent company of at least one hundred million dollars. If the
51 provider's parent company's Form 10-K or audited financial
52 statements are filed to meet the provider's financial stability
53 requirement, then the parent company shall agree to guarantee the
54 obligations of the obligor relating to service contracts sold by the
55 provider in this state.

56 4. Provider fees collected on service contracts shall not be
57 subject to premium taxes. Premiums for reimbursement insurance
58 policies shall be subject to applicable premium taxes.

59 5. Except for the registration requirement in subsection 2
60 of this section, persons marketing, selling, or offering to sell service
61 contracts for providers that comply with sections 407.1200 to
62 407.1227 are exempt from this state's licensing requirements.

63 6. Providers complying with the provisions of sections
64 407.1200 to 407.1227 are not required to comply with other
65 provisions of chapter 374 or 375, or any other provisions governing
66 insurance companies, except as specifically provided.]

[407.1206. Reimbursement insurance policies insuring
2 service contracts issued, sold, or offered for sale in this state shall

3 conspicuously state that, upon failure of the provider to perform
4 under the contract, such as failure to return the unearned provider
5 fee, the insurer that issued the policy shall pay on behalf of the
6 provider any sums the provider is legally obligated to pay or shall
7 provide the service which the provider is legally obligated to
8 perform according to the provider's contractual obligations under
9 the service contracts issued or sold by the provider.]

[407.1209. 1. Service contracts issued, sold, or offered for
2 sale in this state shall be written in clear, understandable
3 language and the entire contract shall be printed or typed in easy
4 to read ten-point type or larger and conspicuously disclose the
5 requirements in this section, as applicable.

6 2. Service contracts insured under a reimbursement
7 insurance policy pursuant to subsection 3 of section 407.1203 shall
8 contain a statement in substantially the following form:
9 "Obligations of the provider under this service contract are
10 guaranteed under a service contract reimbursement insurance
11 policy. If the provider fails to pay or provide service on a claim
12 within sixty days after proof of loss has been filed, the contract
13 holder is entitled to make a claim directly against the insurance
14 company.". A claim against the provider shall also include a claim
15 for return of the unearned provider fee. The service contract shall
16 also conspicuously state the name and address of the insurer.

17 3. Service contracts not insured under a reimbursement
18 insurance policy pursuant to subsection 3 of section 407.1203 shall
19 contain a statement in substantially the following form:
20 "Obligations of the provider under this service contract are backed
21 only by the full faith and credit of the provider (issuer) and are not
22 guaranteed under a service contract reimbursement insurance
23 policy.". A claim against the provider shall also include a claim for
24 return of the unearned provider fee. The service contract shall also
25 conspicuously state the name and address of the provider.

26 4. Service contracts shall identify any administrator, the
27 provider obligated to perform the service under the contract, the
28 service contract seller, and the service contract holder to the extent
29 that the name and address of the service contract holder has been

30 furnished by the service contract holder.

31 5. Service contracts shall conspicuously state the total
32 purchase price and the terms under which the service contract is
33 sold. The purchase price is not required to be preprinted on the
34 service contract and may be negotiated at the time of sale with the
35 service contract holder.

36 6. If prior approval of repair work is required, the service
37 contracts shall conspicuously state the procedure for obtaining
38 prior approval and for making a claim, including a toll-free
39 telephone number for claim service and a procedure for obtaining
40 emergency repairs performed outside of normal business hours.

41 7. Service contracts shall conspicuously state the existence
42 of any deductible amount.

43 8. Service contracts shall specify the merchandise and
44 services to be provided and any limitations, exceptions, and
45 exclusions.

46 9. Service contracts shall state the conditions upon which
47 the use of nonoriginal manufacturer's parts, or substitute service,
48 may be allowed. Conditions stated shall comply with applicable
49 state and federal laws.

50 10. Service contracts shall state any terms, restrictions, or
51 conditions governing the transferability of the service contract.

52 11. Service contracts shall state the terms, restrictions, or
53 conditions governing termination of the service contract by the
54 service contract holder. The provider of the service contract shall
55 mail a written notice to the contract holder within fifteen days of
56 the date of termination.

57 12. Service contracts shall require every provider to permit
58 the service contract holder to return the contract within at least
59 twenty business days of the date of mailing of the service contract
60 or within at least ten days if the service contract is delivered at the
61 time of sale or within a longer time period permitted under the
62 contract. If no claim has been made under the contract, the
63 contract is void and the provider shall refund to the contract holder
64 the full purchase price of the contract. A ten percent penalty per
65 month shall be added to a refund that is not paid within thirty

66 days of return of the contract to the provider. The applicable
67 free-look time periods on service contracts shall only apply to the
68 original service contract purchaser.

69 13. Service contracts shall set forth all of the obligations
70 and duties of the service contract holder, such as the duty to
71 protect against any further damage and the requirement for certain
72 service and maintenance.

73 14. Service contracts shall clearly state whether or not the
74 service contract provides for or excludes consequential damages or
75 preexisting conditions.]

[407.1212. 1. A provider shall not use in its name the
2 words insurance, casualty, guaranty, surety, mutual, or any other
3 words descriptive of the insurance, casualty, guaranty, or surety
4 business; or a name deceptively similar to the name or description
5 of any insurance or surety corporation, or any other provider. This
6 section shall not apply to a company that was using any of the
7 prohibited language in its name prior to August 28,
8 2004. However, a company using the prohibited language in its
9 name shall conspicuously disclose in its service contract the
10 following statement: "This agreement is not an insurance
11 contract."

12 2. A provider or its representative shall not in its service
13 contracts or literature make, permit, or cause to be made any false
14 or misleading statement, or deliberately omit any material
15 statement that would be considered misleading if omitted, in
16 connection with the sale, offer to sell or advertisement of a service
17 contract.

18 3. A person, such as a bank, savings and loan association,
19 lending institution, manufacturer or seller of any product, shall not
20 require the purchase of a service contract as a condition of a loan
21 or a condition for the sale of any property.]

[407.1215. 1. An administrator, provider, or other
2 intermediary shall keep accurate accounts, books, and records
3 concerning transactions regulated by sections 407.1200 to 407.1227.

4 2. An administrator's, provider's, or other intermediary's
5 accounts, books, and records shall include:

- 6 (1) Copies of each type of service contract issued;
- 7 (2) The name and address of each service contract holder to
8 the extent that the name and address have been furnished by the
9 service contract holder;
- 10 (3) A list of the provider locations where service contracts
11 are marketed, sold, or offered for sale; and
- 12 (4) Claims files which shall contain at least the dates,
13 amounts, and description of all receipts, claims, and expenditures
14 related to the service contracts.
- 15 3. Except as provided in this section, an administrator shall
16 retain all records pertaining to each service contract holder for at
17 least three years after the specified period of coverage has expired.
- 18 4. An administrator, provider, or other intermediary may
19 keep all records required pursuant to sections 407.1200 to 407.1227
20 on a computer disk or other similar technology. If an
21 administrator, provider, or other intermediary maintains records
22 in other than hard copy, records shall be accessible from a
23 computer terminal available to the director and be capable of
24 duplication to legible hard copy.
- 25 5. An administrator, provider, or other intermediary
26 discontinuing business in this state shall maintain its records until
27 it furnishes the director satisfactory proof that it has discharged all
28 obligations to contract holders in this state.
- 29 6. An administrator, provider, or other intermediary shall
30 make all accounts, books, and records concerning transactions
31 regulated pursuant to sections 407.1200 to 407.1227 or other
32 pertinent laws available to the director upon request.]

2 [407.1218. As applicable, an insurer that issued a
3 reimbursement insurance policy shall not terminate the policy until
4 a notice of termination, in a form and time frame prescribed by the
5 director, has been mailed or delivered to the director. The
6 termination of a reimbursement insurance policy shall not reduce
7 the issuer's responsibility for service contracts issued by providers
8 prior to the date of the termination.]

2 [407.1221. 1. Providers are considered to be the agent of
3 the insurer that issued the reimbursement insurance policy. In

3 cases where a provider is acting as an administrator and enlists
4 other providers, the provider acting as the administrator shall
5 notify the insurer of the existence and identities of the other
6 providers.

7 2. The provisions of sections 407.1200 to 407.1227 shall not
8 prevent or limit the right of an insurer which issued a
9 reimbursement insurance policy to seek indemnification or
10 subrogation against a provider if the insurer pays or is obligated
11 to pay the service contract holder sums that the provider was
12 obligated to pay pursuant to the provisions of the service contract
13 or under a contractual agreement.]

1 [407.1224. 1. The director may conduct investigations or
2 examinations of providers, administrators, insurers, or other
3 persons to enforce the provisions of sections 407.1200 to 407.1227
4 and protect service contract holders in this state.

5 2. The director may take action that is necessary or
6 appropriate to enforce the provisions of sections 407.1200 to
7 407.1227 and the director's regulations and orders, and to protect
8 service contract holders in this state.

9 3. The director may order a service contract provider to
10 cease and desist from committing violations of sections 407.1200 to
11 407.1227 or the director's regulations or orders, may issue an order
12 prohibiting a service contract provider from selling or offering for
13 sale service contracts, or may issue an order imposing a civil
14 penalty, or any combination of these, if the provider has violated
15 the provisions of sections 407.1200 to 407.1227 or the director's
16 regulations or orders.

17 4. A person aggrieved by an order pursuant to this section
18 may request a hearing before the director. The hearing request
19 shall be filed with the director within twenty days of the date the
20 director's order is effective.

21 5. Pending the hearing and the decision by the director, the
22 director shall suspend the effective date of the order. At the
23 hearing, the burden shall be on the director to show why the order
24 issued pursuant to this section is justified. Such hearing shall be
25 held in accordance with the provisions of chapter 536, RSMo.

26 6. The director may bring an action in the circuit court of
27 Cole County for an injunction or other appropriate relief to enjoin
28 threatened or existing violations of sections 407.1200 to 407.1227
29 or of the director's orders or regulations. An action filed pursuant
30 to this section may also seek restitution on behalf of persons
31 aggrieved by a violation of sections 407.1200 to 407.1227 or orders
32 or regulations of the director.

33 7. A person in violation of sections 407.1200 to 407.1227 or
34 orders or regulations of the director may be assessed a civil penalty
35 not to exceed one thousand dollars per violation.

36 8. The authority of the director pursuant to this section is
37 in addition to other authority of the director.]

 [407.1225. The director may promulgate rules to effectuate
2 sections 407.1200 to 407.1227. Any rule or portion of a rule, as
3 that term is defined in section 536.010, RSMo, that is created
4 under the authority delegated in this section shall become effective
5 only if it complies with and is subject to all of the provisions of
6 chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This
7 section and chapter 536, RSMo, are nonseverable and if any of the
8 powers vested with the general assembly pursuant to chapter 536,
9 RSMo, to review, to delay the effective date, or to disapprove and
10 annul a rule are subsequently held unconstitutional, then the grant
11 of rulemaking authority and any rule proposed or adopted after
12 August 28, 2004, shall be invalid and void.]

 [407.1227. 1. The provisions of sections 407.1200 to
2 407.1224 shall not apply to:

- 3 (1) Warranties;
4 (2) Maintenance agreements;
5 (3) Commercial transactions; and
6 (4) Service contracts sold or offered for sale to persons other
7 than consumers.

8 2. Manufacturer's contracts on the manufacturer's products
9 need only comply with the provisions of sections 407.1209,
10 407.1212, and 407.1224.]

 Section B. The repeal of sections 407.1200, 407.1203, 407.1206, 407.1209,
2 407.1212, 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227 and

3 the enactment of sections 385.200, 385.201, 385.203, 385.204, 385.205, 385.207,
4 385.208, 385.209, 385.210, 385.211, 385.212, 385.300, 385.301, 385.302, 385.303,
5 385.304, 385.305, 385.306, 385.307, 385.310, 385.311, and 385.312, shall become
6 effective January 1, 2007.

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